119-335

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1883.

No. 58.

THE CLARK POMACE HOLDER COMPANY, APPELLANT,

vs.

WILLIAM H. FERGUSON.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF NEW YORK.

FILED SEPTEMBER 25, 1883.

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1 United States Circuit Court, Northern District of New York.
In Equity.

THE CLARK POMACE HOLDER COMPANY
versus
WILLIAM H. FERGUSON.
} Docket No. 3211.

The complainant in the above-entitled cause filed its bill of complaint against the defendant herein on the 1st day of June, 1881, which bill is hereto annexed.

A subpœna to appear and answer in said cause was thereupon issued and served personally upon the defendant previous to the return day thereof, which subpœna and proof of service thereto are hereto annexed.

On the 22nd day of June, 1881, the defendant duly appeared in said cause, by William H. King as *its* solicitor, and on the 1st day of August, 1881, filed his answer to the bill of complaint herein, which answer is hereto annexed.

On the 12th day of August, 1881, the complainant filed its replication to the said answer, which replication is hereto annexed.

Testimony was thereafter taken by and on behalf of the respective parties, and on the 22d day of May, 1883, the said cause was brought to a hearing and argued by counsel upon pleadings and proofs before the Honorable Alfred C. Coxe at a term of this court held at Utica.

A decision was duly made by said court in favor of the defendant and filed herein the 10th day of July, 1883.

On the 17th day of July, 1883, at a term of this court held at Utica, N. Y.—present, the Honorable Alfred C. Coxe, judge—a decretal order in favor of the defendant in the above-entitled cause (dismissing said bill with costs) was duly made and entered therein, which decree is hereto annexed.

2 That thereafter, and on the 15th day of August, 1883, the defendant's costs and disbursements were duly taxed and adjusted by the clerk of this court at $515.40.

On the 16th day of August, 1883, at a special term of this court held at Utica, N. Y.—present, the Honorable Alfred C. Coxe, judge—a final decree was made and entered in the said cause, which final decree is hereto annexed.

3 *Bill of Complaint.*

Circuit Court of the United States for the Northern District of New York, in the Second Circuit. In Equity.

THE CLARK POMACE HOLDER COMPANY
against
WILLIAM H. FERGUSON.

To the honorable the judges of the circuit court of the United States for the northern district of New York, in the second circuit:

The Clark Pomace Holder Company, a corporation duly created, organized, and doing business under the laws of the State of New

York and having its principal place of business at Syracuse, in said State, brings this its bill against William H. Ferguson, of the town of New Scotland, county of Albany, within the district aforesaid, and a citizen of the State of New York, and thereupon your orator complains and says that prior to the 11th day of September, 1876, John Clark, a citizen of the United States of America, residing at Pontiac, in the State of Michigan, became and was the original and first inventor of a certain new and useful improvement in cheese formers for cider presses, which said improvement was not known or used by others before the invention or discovery thereof by the said John Clark, and which was not and had not been, at the time of his application for letters patent therefor, as hereinafter mentioned, in public use or on sale with his consent or allowance, contrary to the provisions of the statutes of the United States in such case made and provided, and has not been in public use or on sale for more than two years prior to his said application.

And your orator, on information and belief, further shows unto your honors that the said John Clark, being as aforesaid the original and first inventor and discoverer of the said improvement, did, on the said 11th day of September, 1876, complete and make an application for letters patent therefor in due form of law; and afterwards, viz., on the 6th day of February, 1877, upon due proceedings had, and having fully and in all respects complied with all the requirements of the law in such case made and provided, letters patent of the United States of America numbered 187,100, bearing date February 6, 1877, were issued to him in due form of law under the seal of the Patent Office of the United States, signed by the Secretary of the Interior and countersigned by the Commissioner of Patents and duly recorded in said Patent Office, by which letters patent there was granted and secured to the said John Clark, his heirs or assigns, for the term of seventeen years from the said 6th day of February, 1877, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used the said improve-
4 ment, which is entitled in said letters patent "improvement in cheese formers for cider presses," a description whereof is given in the specification annexed to the said letters patent, as by reference to said letters patent, or a certified copy thereof here in court to be produced, will more fully and at large appear. And the said John Clark thereupon became and was the sole owner of all the rights and privileges granted and secured, or intended to be granted or secured, in and by said letters patent.

And the said John Clark, on obtaining said letters patent, put said improvement in public use under said patent, and continued the use of the same up to the time of the assignment of said letters patent, as hereinafter set forth.

And your orator further shows that afterwards, by sundry mesne assignments in writing, duly executed and recorded in the Patent Office of the United States, the title to said letters patent became vested in your orator, who became and now is the sole and exclusive owner of said letters patent, and of the invention secured thereby, and of all the exclusive rights and privileges granted and secured,

or intended to be granted and secured, by the said letters patent, for and during the unexpired term thereof.

And your orator further shows that since it became the owner as aforesaid of said letters patent it has continued said improvement in use, and that said rights and privileges have been and are of great value to your orator, and that your orator is entitled to all the damages occasioned to it by the infringements of the said letters patent, numbered 187,100, by the manufacture, sale, or use of said improvement made in violation of the said letters patent, and to the gains and profits made by persons who have infringed said letters patent, and is by law entitled to sue for, recover, and receive the same to its own use.

Your orator further shows that said patented improvement has been largely introduced into use under said letters patent by
5 your orator, and that your orator's rights therein and thereto under said patent have been generally acquiesced in by cider manufacturers and by the public generally, and, but for the wrongful acts of the said defendant and others acting in concert with him, your orator would have made large gains and profits from the manufacture, use, and sale of the said invention, which it has been and is now hindered from making by reason of said wrongful acts of the said defendant.

And your orator further shows that the defendant, William H. Ferguson, well knowing the premises and the rights and privileges secured to your orator, as aforesaid, but contriving to injure and deprive your orator of the profits, benefits, and advantages which ought and otherwise would have accrued to it from said invention, did on divers days and times since the assignment of said patent to your orator, and at divers times since that time, and before the commencement of this suit, at the town of New Scotland, in the county of Albany and State of New York, within the district aforesaid, without its license or allowance, and against the will of your orator, and in violation of its rights and in infringement of the aforesaid letters patent, unlawfully and wrongfully make, or cause to be made, use, or cause to be used, sell, or cause to be sold, said invention or cheese formers for cider presses, made according to and employing and containing the said patented improvement.

And your orator further shows that the said William H. Ferguson did, during the time aforesaid, and is now, unlawfully making, using, and selling large quantities of cider produced by the use of the improvements described in said letters patent, and in violation of the said exclusive privileges of your orator as aforesaid, and in infringement of said letters patent, but what quantity of cider, produced as hereinbefore referred to, the said defendant has made, or caused to be made, your orator does not know and cannot state, but upon information and belief your orator avers that he has made large quantities of the same, and is now making, using, manufacturing into vinegar, and selling large quantities of the same, and
6 that he has derived and received, and is still deriving and receiving, from such use and sale great gains and profits, but to what amount your orator is ignorant and cannot set forth; but your

orator believes the same to be the full sum of five thousand dollars, and so charges the fact to be, and prays that the defendant may be required to make a diclosure of all such gains and profits and of the extent of the use of said patented improvement by said defendant. And your orator further says that the defendant continues to use said invention in manufacturing large quanties of cider, and refuses, though warned and requested by your orator to desist therefrom, and refuses to pay to your orator such gains and profits, by means whereof the defendant has injured, and is still greatly injuring, your orator, and has deprived, and is still depriving, your orator of, and has prevented, and is still preventing, your orator from, receiving the gains and profits from the use of the exclusive right to use the invention and improvement claimed in said letters patent, which your orator otherwise and but for the said wrongful acts of the said defendant would have obtained and received. And your orator further says that the use of the said invention by the said defendant, and his preparation for and avowed determination to continue the same, and his other aforesaid unlawful acts, in disregard and defiance of the rights of your orator, have the effect to and do encourage and induce others to infringe said letters patent in disregard of your orator's rights. In consideration whereof, to the end that the said defendant may, if he can, show why your orator should not have the relief hereby prayed, and may, upon his oath, and according to the best and utmost of his or his agents', clerks', and servants' knowledge, remembrance, information, and belief, full, true, direct, and perfect answers make to the premises, and to all and singular the matters hereinbefore stated and charged, as fully and particularly as if he were interrogated as to each and every of said matters, and may be compelled by a decree of this court to account for and pay over to your orator the gains and profits which have accrued
7 to or have been earned or received by said defendant by reason of the said infringements of said defendant, and all damages suffered by your orator from the said unlawful acts and infringements of said defendant.

May it please your honors to grant unto your orator a writ of *subpœna ad respondendum* of the United States of America, issuing out of and under the seal of this honorable court, directed to the said defendant, William H. Ferguson, commanding him on a day certain, therein to be named, and under a certain penalty, to be and appear in this honorable court, then and there to make answer unto this bill of complaint and all and singular the premises, and to stand to, perform, and abide such order, direction, and decree herein as may be made against him by this court.

And your orator further prays that a writ of injunction may be issued out of and under the seal of this honorable court, according to the form of the statute in such case made and provided, perpetually enjoining and restraining the said defendant, his clerks, attorneys, agents, the servants, and workmen from directly or indirectly making or causing to be made, using or causing to be used, or vending to others to be used said invention, in any manner, or any cheese formers for cider presses containing or embodying, or in any way

counterfeiting or imitating the said invention, as described and claimed in said letters patent, and from infringing upon or violating the said letters patent by the use or sale of the said invention of cheese formers for cider presses in any way whatever, and that all such infringing cheese formers for cider presses, or articles in the possession of said defendant, may be forthwith destroyed or delivered to your orator, and also that said defendant be provisionally enjoined from making, using, or selling said patented improvement during the pendency of this suit.

And your orator further prays that the said defendant may be decreed to pay the costs of this suit, and that your orator may have such further or other relief in the premises as the circum-
8 stances of this case may require and to this honorable court may seem meet. And your orator, as in duty bound, will ever pray.

THE CLARK POMACE HOLDER COMPANY,
By WILLIAM D. DUNNING, *Its Treasurer.*
WALTER E. WARD,
Solicitor for Complainant.

ROBERT W. HARDIE,
Of Counsel.

UNITED STATES OF AMERICA,
County of Onondaga, Northern District of New York, } *ss:*

William D. Dunning, being duly sworn, deposes and says that he is the treasurer of the Clark Pomace Holder Company, the complainant in the foregoing bill named, and has read the said bill and knows the contents thereof; that the said bill is true of his knowledge, except as to those matters which are therein stated to be on information and belief, and as to those matters he believes it to be true.

And this deponent verily believes the said John Clark to have been the first and original inventor of the improvements claimed in said letters patent, and that the same have not been in use or described before the invention and discovery thereof by the said John Clark.

WM. D. DUNNING.

Subscribed and sworn to before me this 26th day of May, 1881.
E. NOTTINGHAM,
Notary Public, Onondaga Co.

(Endorsed:) Bill of complaint. Filed June 1, 1881.

9 *Subpœna.*

The President of the United States of America to William H. Ferguson, Greeting:

You are hereby commanded that you personally appear before the judges of the circuit court of the United States for the
[L. S.] northern district of New York, in the second circuit, on the first Monday in July, 1881, to answer to a bill of complaint exhibited against you in said court by The Clark Pomace

Holder Company, and to do further and receive whatever said court shall have considered in that behalf, and this you are not to omit under the penalty of two hundred and fifty dollars.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at the city of Utica, in said northern district, the first day of June, eighteen hundred and eighty-one.

WILLIAM H. BRIGHT, *Clerk.*

WALTER E. WARD,
Solicitor for Complainant.

Memorandum.

The defendant is to enter his appearance in the suit above mentioned, in the clerk's office at Utica, on or before the day at which the above subpœna is returnable; otherwise the bill may be taken *pro confesso.*

WILLIAM H. BRIGHT, *Clerk.*

10 UNITED STATES OF AMERICA, }
Northern District of New York, } *ss:*

I hereby certify that on the 4th day of June, 1881, at New Scotland, in my district, I personally served the within writ of subpœna on the within-named defendant by leaving a copy thereof at his usual place of abode, with a member of his family.

C. D. MACDOUGADL,
U. S. Marshal,
By JAMES H. KELLY, *Deputy.*

Service	$2 00
Travel to & retur'g, 105 miles	6 30
	$8 30 p'd by comp. sol's.

(Endorsed:) No. 3211. United States circuit court, northern district of New York. Clark Pomace Holder Company *vs.* Wiliiam H. Ferguson. Equity subpœna. Walter E. Ward, complainants' solicitors. Filed June 7th, 1881.

11 *Appearance.*

William H. King, attorney and counsellor-at-law, No. 31 North Pearl St.

U. S. Circuit Court, Northern District of New York. In Equity.

THE CLARK POMACE HOLDER COMPANY, Complainants, }
vs. } No. 3211.
WILLIAM H. FERGUSON, Defendant. }

ALBANY, N. Y., *June 20th,* 1881.

William H. Bright, clerk of said court.

DEAR SIR: Please enter my appearance as solicitor for the above-named defendant in the above-entitled action, and oblige

Yours, &c., WM. H. KING.

(Endorsed:) Filed June 22d, 1881.

12 *Answer.*

Circuit Court of the United States for the Northern District of New York, in the Second Circuit. In Equity.

THE CLARK POMACE HOLDER COMPANY, Complainant,
against
WILLIAM H. FERGUSON, Defendant.

To the honorable the judges of the circuit court of the United States for the northern district of New York, in the second circuit:

The above-named defendant, now and at all times saving and reserving to himself all and all manner of benefit and advantage of exception to the many errors and insufficiencies in the complainant's bill of complaint, for answer thereunto, or to so much thereof as this defendant is advised is material and necessary to make answer unto, answering, says:

First. That he has not knowledge or information sufficient to form a belief as to the truth of the allegation "that the said complainant is a corporation duly created, organized, and doing business under the laws of the State of New York, and having its principal place of business at Syracuse, in said State," and he therefore denies the same, and leaves the said complainant to the proof thereof.

Second. That he denies the allegations in said bill of complaint contained "that prior to the 11th day of September, 1876, John Clark, a citizen of the United States of America, residing at Pontiac, in the State of Michigan, became and was the original and first inventor of a certain new and useful improvement in cheese formers for cider presses."

Third. That he denies the allegation in said bill of complaint contained "that said improvement was not known or used by others before the invention or discovery thereof by the said John
13 Clark, and the same was not and had not been at the time of his application for letters patent thereof, as thereinafter mentioned, in public use or on sale with his consent or allowance, and had not been in public use or on sale for more than two years prior to his said application."

Fourth. That he has not knowledge or information sufficient to form a belief as to the truth of the allegation contained in the second paragraph of said complaint, as contained between the sixth line of folio six and the fifth line of folio nine, in respect to application by said John Clark for a patent for said improvement, and the granting of letters patent therefor, numbered 187,100, bearing date February 6th, 1877, to him; and that said Clark thereupon became and was the sole owner of all the rights secured by said letters patent, and he therefore denies the same and leaves the complainant to his proof thereof.

Fifth. That he has not knowledge or information sufficient to form a belief as to the truth of the allegation in said complaint contained that said John Clark, on obtaining said letters patent, put said improvements in public use under said patent and con-

tinued the use of the same up to the time of the assignment of said letters patent, as thereinafter set forth.

Sixth. That he has not knowledge or information sufficient to form a belief as to the truth of the allegation in said complaint contained that afterwards, by sundry mesne assignments in writing, duly executed and recorded in the Patent Office of the United States, the title to said letters patent became vested in said complainant and he therefore denies the same.

Seventh. That he denies the allegation in said complaint contained that the said complainant is now the sole and exclusive owner of said letters patent, and of the invention secured thereby, and of all the exclusive rights and privileges granted and secured or intended to be granted and secured by the said letters patent for and during the unexpired term thereof; but, on the contrary thereof, this defendant avers, upon information and belief, that the "Boomer
14 and Boschert Press Company" are the owners of said alleged patent, if any such letters patent were ever made, granted, and issued, as is alleged in said complaint; and the rights and privileges, if any, secured by said alleged patent, if ever issued, belong to the said "Boomer and Boschert Press Company."

Eighth. That he denies the allegations in said complaint contained that since the said complainant became owner of said letters patent (if said complainant ever did become such owner) it has continued said improvement in use; that said rights and privileges have been and are of great value to said complainant; that said complainant is entitled to all the damages occasioned to it by the infringement of the said letters patent, numbered 187,100, by the manufacture, sale, or use of said improvement, made in violation of the said letters patent, and to the gains and profits made by persons who have infringed said letters patent, and is by law entitled to sue for, recover, and receive the same to its own use; on the contrary thereof, this defendant avers, as hereinbefore stated, if any such right to damages exists as aforesaid, the same belongs to the said "Boomer and Boschert Press Company."

Ninth. That he denies the allegation in said complaint contained "that said patented improvement has been largely introduced into use, under said letters patent, by said complainant; that said complainant's rights therein and thereto, under said patent, have been generally acquiesced in by cider manufacturers and by the public generally, and, but for the wrongful acts of this defendant and others acting in concert with him, the said complainant would have made large gains and profits from the manufacture, use, and sale of the said invention; that it has been and is now hindered from making the same by reason of said wrongful acts of this defendant."

Tenth. That he denies the allegations in said complaint contained that this defendant, well knowing the premises and the rights and privileges secured to said complainant, and continuing to injure and deprive said complainant of the profits, benefits, and advantages which ought and otherwise would have accrued to it from
15 said invention, did on divers days and times since the assignment of said patent to it, and at divers times since that

time and before the commencement of this suit, at the town of New Scotland, in the county of Albany and State of New York, within the district aforesaid, without the license or allowance of and against the will of said complainant, and in violation of its rights, and in infringement of the aforesaid letters patent, unlawfully and wrongfully make, or cause to be made, use, or cause to be used, sell, or cause to be sold, said invention, or cheese formers for cider presses, made according to and employing and containing the said alleged patented improvement.

Eleventh. That he denies the allegations in said complaint contained that he, this defendant, did, during the times aforesaid, and is now, unlawfully making, using, and selling large quantities of cider produced by the use of the improvements described in said letters patent, and in violation of the said exclusive privileges of said complainant as aforesaid, and in infringement of said letters patent; that this defendant had made large quantities of the said cider, and is now making, using, manufacturing into vinegar, and selling large quantities of the same, and that he has derived and received and is still deriving and receiving from such use and sale great gains and profits.

Twelfth. That he denies the allegations in said complaint contained that he, this defendant, continues to use said invention in manufacturing large quantities of cider, and refuses, though warned and requested by said complainant, to desist therefrom, and that this defendant has injured and is still injuring said complainant, and has deprived and is still depriving said complainant of, and has prevented and is still preventing said complainant from, receiving the gains and profits from the use of the exclusive right to use the invention and improvement claimed in said letters patent.

Thirteenth. That he denies the allegation in said complaint contained that the use of the said invention by the said defendant, and his preparation for and avowed determination to continue the
16 same, and his other aforesaid unlawful acts in disregard and in defiance of the rights of said complainant, have the effect to and do encourage and induce others to infringe said letters patent in disregard of said complainant's rights.

Fourteenth. That this defendant denies each and every material allegation in said complaint contained not hereinbefore especially admitted or denied.

Fifteenth. This defendant, for a further answer and defense to said complaint, denies that letters patent, or any instrument having the force and effect of letters patent, or any instrument having any legal existence, was granted or issued to said John Clark for the improvement mentioned in said complaint, but, on the contrary, this defendant avers that if said Clark ever presented to and filed with said Commissioner of Patents a petition for the granting of letters patent to him for said improvement, that he, said Clark, for the purpose of deceiving said Commissioner and the public, fraudulently and with evil intent, maliciously and falsely swore that he was the original and first inventor of said improvement, he, said Clark, at the time well knowing the fact to be that he was not the first and original in-

ventor of said improvement, but that one Boomer (whose first name is unknown to this defendant, but who was one of the firm of Boomer and Boschert, of Syracuse, New York) had stated to him the invention, and that the said invention had been published for the newspaper known as the "Boomer and Boschert Press," published by said Boomer and Boschert Press Company, at said Syracuse, more than two years prior to his application, as alleged in said complaint, for said patent—to wit, September 11th, 1876.

Sixteenth. For a further and separate answer and defense to said complaint this defendant avers that, by reason of the false statement made by said Clark, as set forth in the paragraph last above, and by reason of the suppression upon his part of the true facts relating to the premises, he, said Clark, if any patent for said improvement has ever been granted to him, has surreptitiously and unjustly obtained said patent.

17 Seventeenth. For a further and separate answer and defense to said complaint, this defendant avers that the improvement alleged in said complaint to have been invented by said Clark, and for which a patent is alleged to have been granted to him, was described in a printed publication known as the "Boomer and Boschert Press," published and issued by said "Boomer and Boschert Press Company," at Syracuse, New York, early in the month of September, 1874, prior to the supposed invention and discovery thereof by said Clark, if he ever did invent or discover the same, which this defendant denies as aforesaid, and more than two years prior to his pretended application for a patent therefor.

Eighteenth. For a further and separate answer to said complaint, this defendant avers that said Clark was not the original and first inventor or discoverer of any material or substanial part of the device or improvement alleged in said complaint to have been patented.

Nineteenth. For a further and separate answer to said complaint, this defendant says that if said Clark ever invented or discovered said improvement that he made and sold said improvement for more than two years prior to his pretended application for patent therefor, and he abandoned said invention or improvement to the public.

Twentieth. For a further and separate answer to said complaint, this defendant avers that the said alleged invention or improvement had been in public use or on sale in the United States for more than two years before the alleged application for a patent therefor by said Clark, and that the following-named persons, among others, used the same during the whole and some for more than the said two years prior to said alleged application, to wit: George Casper, of Howe's Cave, Schoharie county, New York, used it in the year 1873; George A. Bouck, of Schoharie, Schoharie county, New York, used it in the early part of the year 1874; E. B. Holden, of North Clarendon, Vermont, used it for many years prior to September 11, 1874; George Williams, of Royal Oaks, Michigan, used it for many years

18 prior to September 11, 1874; Holbrook, whose first name this defendant does not know and cannot at present ascertain, of the firm of Holbrook, Jeffers & Company, and also the said firm, of

Sherbourne, Massachusetts, used the same for many years prior to September 11, 1874; Jeremiah Blackwell, of East Cleveland, Ohio, and William Selkirk, of Bethlehem, Albany county, New York, and Lewis Selkirk, of Bethlehem, Albany county, also used the same for many years prior to September 11, 1874.

That the following-named persons knew of said invention or improvement prior to September 11, 1874, to wit: John Ferguson, of New Scotland, Albany county, New York; John Gardenier, of New Scotland, Albany county, New York; John Mills, Schenectady, Schenectady county, New York; Frank Casper, of Howe's Cave, Schoharie county, New York; Sylvester Hadgell, of Howe's Cave, Schoharie county, New York; Joseph Day, of Nottingham, Cuyahoga county, Ohio; Robert Butterworth, of Trenton, New Jersey.

Twenty-first. For a further and separate answer and defense to said complaint, this defendant avers that during the year 1870 one N. Griffes, of Schenectady, Schenectady county, New York, made a cider press containing the pretended invention and improvement of said Clark mentioned in said complaint, and for which it is alleged that said Clark obtained a patent and used the same continuously until the year 1874, when this defendant, on or about November 24, 1874, purchased the said cider press from said Griffes, which press at the time of said purchase contained the said pretended invention and improvement of said Clark, and this defendant has since the year 1874 continuously used the said press, and this defendant supposes that the using of said press, so purchased by him as aforesaid in 1874, is the infringement of the alleged rights of said complainant as alleged in its said complaint.

Twenty-second. For a further and separate answer and defense to said complaint, this defendant denies that said complainant has any rights under said alleged letters patent as against this de-
19 fendant; that he has infringed said alleged letters patent, and that he is in any way or in any sum indebted to said complainant; that there is any invention or novelty in said alleged infringement, and that it could be patented or become a subject of a patent; but, on the contrary, this defendant avers that he is simply pursuing a business which he has heretofore quietly pursued, and with the same devices, presses, and improvements which he purchased and owned long prior to the date of the alleged application for said letters patent by said Clark, to wit, September, 11, 1876, and for more than two years prior to said last-mentioned date.

Wherefore he prays that he may be hence dismissed with his reasonable costs and charges in this behalf wrongfully sustained; and this defendant will ever pray.

WM. H. FERGUSON.

WM. H. KING,
Defendant's Solicitor.

Office and P. O. address, No. 31 North Pearl street, Albany, N. Y.

STATE OF NEW YORK,
City and County of Albany, Northern District of New York, } ss:

William H. Ferguson, the above-named defendant in this action, being duly sworn, says he has read the foregoing answer and knows the contents thereof, and that the same is true of his own knowledge except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

WM. H. FERGUSON.

Sworn to before me this 30th day of July, 1881.
[L. S.] WILLIAM H. LOW,
Notary Public.

(Endorsed:) Answer of defendants to complainant's bill of complaint. Filed Aug. 1st, 1881.

20 *Replication.*

Circuit Court of the United States for the Northern District of New York, in the Second Circuit. In Equity.

THE CLARK POMACE HOLDER COMPANY
vs.
WILLIAM H. FERGUSON. } No. 3211.

The replication of The Clark Pomace Holder Company to the answer of William H. Ferguson, defendant.

This repliant, saving and reserving unto itself now and at all times hereafter all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for replication thereunto says it will aver, maintain, and prove its said bill of complaint to be true, certain, and sufficient in law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied to by this repliant, without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied to, and not herein and hereby all and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by its said bill it has already prayed.

W. E. WARD,
Complainant's Solicitor.

(Endorsed:) Replication. Filed Aug. 12th, 1881.

21 *Decretal Order.*

At a term of the United States circuit court in and for the second circuit and northern district of New York, held at the city of Utica on the 17th day of July, 1883.

Present: Hon. Alfred C. Coxe, judge.

THE CLARK POMACE HOLDER COMPANY
against
WILLIAM H. FERGUSON.

The said cause having come on to be heard at a term of court for final hearing therein, and the proofs upon the part of the respective parties having been duly presented, submitted, and filed, and after hearing J. Van Santvoord and Walter E. Ward, for said complainant, and William H. King, for the defendant, it is hereby ordered, adjudged, and decreed that the letters patent of the United States, bearing date February 6, 1877, and numbered 187,100, issued to John Clark for an "improvement in cheese formers," upon which this action is brought, are, and the same are hereby, declared invalid.

And it is further ordered, adjudged, and decreed that the bill of complaint herein be dismissed with costs.

ALFRED C. COXE.

(Endorsed:) Decretal order. William H. King, sol'r for def'dt. Office and P. O. address No. 31 North Pearl St., Albany, N. Y. (Original.) Filed July 17, 1883.

22 *Final Decree.*

At a special term of the United States circuit court in and for the second circuit and northern district of New York, held at the city of Utica on the 16th day of August, 1883.

Present: Hon. Alfred C. Coxe, judge.

THE CLARK POMACE HOLDER COMPANY, Complainant, *against* WILLIAM H. FERGUSON, Defendant. } In Equity. No. 3211.

The said cause having come on to be heard at a term of the said court for final hearing therein, and the proofs upon the part of the respective parties having been duly presented, submitted, and filed, and the counsel for the respective parties having been heard, and after due deliberation the said court did order, adjudge, and decree that the said letters patent of the United States, bearing date February 6, 1877, and numbered 187,100, issued to John Clark for an "improvement in cheese formers," upon which this action is brought, are, and that the same are thereby, declared invalid, and also that the bill of complaint herein be dismissed with costs.

And the costs herein having been, upon due notice, taxed at the sum of five hundred [and] fifteen dollars and forty cents:

Now, on motion of William H. King, solicitor for said de-
23 fendant, it is hereby ordered, adjudged, and decreed that the defendant, William H. Ferguson, may recover of the said complainant, The Clark Pomace Holder Company, the said sum of five hundred and fifteen dollars and forty cents ($515.40), the costs of said suit, and that said defendant have execution therefor.

ALFRED C. COXE.

(Endorsed:) In equity. No. 3211. United States circuit court northern district of New York. The Clark Pomace Holder Company *vs.* William H. Ferguson. Final decree. William H. King, def't's solicitor. Office & P. O. address 31 North Pearl St., Albany, N. Y. (Original.) Filed Aug. 16, 1883.

Whereupon the said pleadings, process, orders, and final decree, together with other papers in said cause, are duly annexed hereto, and this decree is duly signed and enrolled, pursuant to the rules and practice of the court, this 15th day of August, A. D. 1883, at one o'clock in the afternoon.

W. S. DOOLITTLE, *Clerk.*

(Endorsed:) Equity No. 3211. United States circuit court, northern district of New York. The Clark Pomace Holder Company *vs.* William H. Ferguson. Enrolled decree. William H. King, def't's solicitor. Costs, $515.40. Total, $515.40. Filed the 16th day of August, 1883, 1 o'clock p. m. William S. Doolittle, clerk.

24 *Decision [of] Coxe, J.*

United States Circuit Court, Northern District of New York.

THE CLARK POMACE HOLDER COMPANY
vs.
WILLIAM H. FERGUSON.

Walter E. Ward and J. Van Santvoord, for complainant; William H. King, for defendant; Coxe, J.

This is an equity action for infringement of letters patent issued to John Clark on the 6th day of February, 1877, for an alleged improvement in cheese-formers for cider presses. The patent was subsequently assigned to the complainant. The patentee in the specification declares: "The object I have in view is in laying up a 'cheese' for the cider press, where each layer is folded up in a cloth to secure uniformity of thickness of all the layers in the mass or cheese, and thus secure uniform pressure on its entire area, and to avoid all tendency to break the pomace frames or racks. To this end it consists in the employment of a guide frame in combination with extended pomace racks, as more fully hereinafter set forth."

25 The claim is in the following words: "The guide-frame D, in combination with an extended pomace-rack, and a cloth to inclose a layer of pomace therein, substantially as described."

In the "Cider Makers' Manual," published in 1869 by J. S. Buell,

the author, after stating the advantages to be derived from the substitution of cloths for straw as used in the old method of cider making, proceeds to describe, at page 47, a plan which suggested itself to him in the fall of 1868, and which, in its essential particulars, is similar to the process described in the patent. After explaining how the frames are made, by placing lath or thin boards near together and nailing to them similar boards placed at right angles, he proceeds in these words: "These frames are designated and known as pomace frames, and are used in laying up a cheese as follows:

"First. Place upon the platform of the press one of these frames, seeing that it covers the entire inner surface of the curb. Place upon the top of this frame the cloth or cloths, at the same time covering the inside of the rack with one thickness of cloth, laying the lower ends over the frame, and then fill in with pomace to the uniform depth of from three to five inches. Then lay on cloths, and upon the cloths place another frame, upon which lay other cloths and add thereto five inches of pomace, thus building up successive layers of frames, cloths, pomace, cloths, frames, cloths, pomace, alternating in like manner until the curb is filled, and then proceed as before described. The frames separate the cloths and allow
26 the free passage of the cider from all parts of the cheese through and between them, while the openings between the slats of the frames act as conduits for the liquid to the outside receptacle."

It also appears by other evidence that two years and more before the application cloths had been used in a precisely similar manner to that described in the patent; racks or frames had been used; so had guide-frames.

This is not seriously disputed by the complainant's counsel, but they contend that the combination is new; that a guide-frame in combination with an extended pomace-rack and a cloth to inclose the layer of pomace was not used or known before.

Without pausing to consider the defense of a purely technical character relating to defects in the drawings, omissions in the affidavit, and the like, it will be more satisfactory to examine, in the light of recent adjudications, the three questions which seem to be of paramount importance:

First. Does the use of the various elements claimed in the patent constitute a valid combination?

Second. Has the patentee discovered anything that rises to the dignity of invention? And,

Third. Was the precise process described in the patent known and used two years and more prior to the application?

The law as applicable to patents of this character would seem to be as follows:

27 All the component parts must so enter into a combination of old elements that each qualifies every other.

The result must be the product of the combination which is patentable, provided something new and useful is produced. If the elements of the combination act independently of each other, or if one element acts independently of the others, it is an aggregation of

parts, and not entitled to protection as a combination. It is indispensable that a new and useful result should be produced either by the invention of a new thing or a new combination of old things. Unless this is the case, even though the elements act reciprocally and in combination, the requirements of the law are not satisfied. The combination must be new; so must the result.

Hailes *v.* Van Wormer, 20 Wall., 353.
Pickering *v.* McCullough, 104 U. S., 310.
Reckenderfer *v.* Faber, 92 U. S., 347.
Packing Co. Cases, 105 U. S., 566.
Perry *v.* Co-operative Co., 12 Red. Fep., 436.
Welling *v.* Crane, 14 Fed. Rep., 571.
Slawson *v.* Railroad Co., 4 Fed. Rep., 531.
Stephenson *v.* Railroad Co., 14 Fed. Rep., 457.
Man'f'g Co. *v.* Meyers, 23 O. G., 1443.
Doubleday *v.* Roess, 11 Fed. Rep., 737.

Turning now to the patent in controversy, it may be said at the outset that the presumption of law, where a patent is
28 claimed for a combination simply, is that all the elements of the combination are old. But in addition to this presumption it is, as above stated, practically conceded that all the elements entering into this alleged combination are old.

The proof sufficiently establishes the fact that cloths and racks had been used before; that they had been used both separately and in combination, and, further, that they had been used in combination with some device which, if not technically a "guide-frame," enabled the manufacturer to produce a layer of pomace "of a uniform depth of from three to five inches." So it would seem that the only distinction that can be suggested between the old method and the method described in the patent is in the extended racks; in the use of a guide-frame a few inches smaller instead of a few inches larger than the racks.

The result sought and obtained in both cases was the expression of the juice from the pomace. Whether the new method possesses advantages over the old is left somewhat to conjecture by the proof. Perhaps the presumption that it does possess such advantages is a legitimate one, arising from the patent itself.

It is sometimes extremely difficult to distinguish between a meritorious combination and a mere aggregation of distinct parts, and the case at bar furnishes a new illustration of this fact.
29 It is not quite easy to perceive how the use of the guide frame causes any coaction or combination between it and the racks and cloths. No new result is produced by its use; the press operates in the old way; the cheese is pressed down and the juice forced out as before. To what that is new or useful does the guide frame contribute in connection with the other devices? In other words, suppose this patentee to be the first inventor of racks and cloths, could he be deprived of the benefits of his discovery in its simplest and most practical form by another person who should

obtain a patent for such a combination as is described in the specification?

Would it not be immediately insisted that the latter was simply using the old invention with the addition of a very simple and well-known mechanical contrivance which added to the old combination no new co-operative element?

It would seem at least doubtful whether the guide frame, to any greater extent than the shovel with which the pomace is placed upon the racks, or the instrument with which it is "'struck' level with the girts of the frame," acts in combination with the racks and cloths. The guide frame has been removed and has ceased to perform any function before the racks and cloths begin to act reciprocally; it does not act on them or they on it. If straw or a solid platform were under the guide frame instead of the racks it would perform the same office.

30 To constitute a valid combination there must be a new result produced by the combined action of all the component parts. What is that result in this case?

It may perhaps be admitted that the guide frame operates more conveniently than the old devices; but something more than this is necessary to sustain a patent for a combination.

Second. Assuming for the moment that there is here what the law recognizes as a combination, viz., such a union of separate and distinct parts that each operates upon and with the others, producing a new and useful result by their united action, the next question to be considered is, has the patentee invented anything worthy of protection?

Before this patent cider makers had an undoubted right to use racks and cloths in combination or alone; and they had also a right to use some device by which the pomace could be placed on the rack in layers of uniform thickness. Any man of ordinary mechanical ingenuity who wished to confine a yielding substance within prescribed limits would almost certainly make a frame of the desired size. Clark did this and only this. He nailed four boards of equal length together at the corners in the form of a hollow square and laid it on the rack. Why is there any more of invention in this than the placing of the window in the stove case or the mirror in the car case?

What instrumentality does the patentee here use that was not known and free to every cider maker long before the patent?

31 Take away the guide frame and nothing remains of his invention. Its use, though in a new position, would seem to be a simple mechanical contrivance requiring only ordinary skill and judgment and not amounting to invention. Furnish any practical cider maker with cloths and racks, direct him to place the pomace on the racks in a uniform and symmetrical manner, and it would immediately occur to him to do just what the patentee here did.

To adopt the sententious language of the court in Stephenson *v.* The Railroad Co., *supra*, it may be said, "To authorize a patent the

law requires the invention of a new thing. It is not satisfied by inventing a new place for an old thing without change of result."

Third. But it is insisted that the precise combination described in the patent was in use more than two years before the application. The complainant does not seriously dispute that it was used in the fall of 1874, but argues that its use was subsequent to Sept. 11th—the application being filed Sept. 11th, 1876.

The undisputed evidence shows that it was used for a long time prior to the application, and in some instances the complainant is forced to admit that the delay in applying for a patent brought the patentee very close to the two years' limitation. A number of witnesses who are unimpeached swear to the use of the combi-
32 nation in 1873, and even before that year. It is true that several persons were called by the complainant who testify that they heard nothing of its use though living in the immediate neighborhood. It is also true that some of defendant's witnesses are contradicted and otherwise discredited.

Bearing in mind, however, the rule that proof of but one instance of public use more than two years prior to the application for the patent is sufficient to defeat it, the court would hardly be justified in disregarding the testimony of the numerous witnesses who positively affirm that they used the rack, cloths, and frame in 1871, '2–'3–'4.

Egbert *v.* Lippman, 104 U. S., 333.
Manning *v.* Glue Co., vol. 23 O. G., 2413.

As indicative of the patentee's own views upon the novelty and patentability of the alleged invention, it appears that he visited Syracuse in the summer of 1874 and explained his system to a member of the Boomer and Boschert Press Company—Mr. Boomer.

In September following, in a periodical issued by that company and widely circulated, there appeared a full and complete description of the system described in the patent. Under the heading—"The best system yet devised"—is the following statement:

"It is to last year's experience that we are indebted for the most sensible plans for laying up a cheese, a plan which we predict
33 will be speedily adopted by all wide-awake cider makers, although perhaps it has not yet been sufficiently tried to establish its merits, yet, as it has been successfully put into use by several parties, there seems to be no question as to its feasibility." Then follows the description. This certainly is a very significant piece of evidence in view of the fact that Mr. Boomer, who admits that he probably wrote the article, is now vice-president of the Clark Pomace Holder Company, the complainant in this action, his relations with the patentee being of an intimate and confidential character.

Upon the whole evidence it is thought that the patent cannot be sustained. The bill is therefore dismissed.

(Endorsed:) Decision. Filed July 10th, 1883.

34 *Complainant's Testimony.*

U. S. Circuit Court, Northern District of New York.

THE CLARK POMACE HOLDER COMPANY
vs.
WILLIAM H. FERGUSON.

THE SAME *vs.* LEONARD WALLEY.

THE SAME *vs.* WILLIAM L. VAN AUKEN.

It is hereby mutually agreed by and between the parties hereto that James M. Ruso be examiner *pro hac vice*, to take the testimony on behalf of the complainant in the above-entitled causes, with all the rights and powers of an examiner regularly appointed by the court, and that the testimony so taken before him be the testimony of the complainant in these cases. And it is further understood and agreed that said Ruso take said testimony by short-hand, and that the copy transcribed by him from his stenographic notes, and certified by him under oath to be a correct copy of the testimony given, be used and considered in all respects as the original testimony taken before an examiner.

And it is hereby further agreed that the case in which William H. Ferguson is defendant be the first case tried, and that the other cases above mentioned be held open without testimony until the Ferguson case is finally disposed of, and that the testimony taken in the Ferguson case be the testimony of the other cases so far as applicable.

And it is further agreed that said testimony be taken orally. And we hereby consent that the court appoint accordingly.

Dated Albany, N. Y., Aug. 15, 1881.

WALTER E. WARD,
Complainant's Solicitor.
WM. H. KING,
Defendant's Solicitor.

Ordered accordingly.

(Endorsed:) Filed July 11th, 1883.

35 United States Circuit Court, Northern District of New York.
In Equity.

THE CLARK POMACE HOLDER COMPANY
vs.
WILLIAM H. FERGUSON. } No. 3211.

Testimony for the complainant taken before James M. Ruso, Esq., notary public and special examiner, Albany, N. Y., on the 17th day of September, 1881.

Present: Walter E. Ward, Esq., of counsel for complainant; William H. King, Esq., of counsel for defendant. Defendant, Wm. H. Ferguson, also appears in person.

Plaintiff's counsel offered in evidence a stipulation entered into

between plaintiff's counsel to take evidence in the case of the Clark Pomace Holder Company against William H. Ferguson before James M. Ruso, stenographer.

Plaintiff's counsel offered in evidence copy of complaint and answer in the above-entitled action.

Plaintiff's counsel offered in evidence a certified copy of letters patent, number 187,100, to John Clark, dated February 6, 1877, marked "U. S. C. C., N. D. S. N. Y. The Clark Pomace Holder Company against William H. Ferguson. Plaintiff's Exhibit No. 1. J. M. R."

Plaintiff's counsel offered in evidence a certified copy of letters patent, No. 148,034, to John Clark, dated March 3, 1874, being the patent referred to in patent No. 187,100.

Objected to by defendant's counsel on the ground of its irrelevancy and immateriality.

Marked "U. S. C. C., N. D. S. N. Y. The Clark Pomace Holder Company against William H. Ferguson. Plaintiff's Exhibit No. 2. J. M. R."

Plaintiff's counsel offered in evidence several assignments of patent No. 187,100, with the certificates of recording in the Patent Office at Washington annexed, with the privilege of afterwards
36 withdrawing the original assignments and introducing certified copies in their place at a future hearing of the case. First, assignment from John Clark to Charles G. Hampton, conveying one-half interest in the patent, dated February 17, 1877, recorded February 22, 1877, at the Patent Office at Washington, Liber J 21, page 180, of Transfers of Patents. Marked "U. S. C. C., N. D. S. N. Y. The Clark Pomace Holder Company against William H. Ferguson. Plaintiff's Exhibit No. 3. J. M. R."

Next, an assignment from John Clark to the Clark Pomace Holder Company of one-half in said patent above mentioned, dated October 15, 1878, recorded in the Patent Office at Washington, October 18, 1878, in Liber H 23, page 410, of Transfers of Patents. Marked "U. S. C. C., N. D. S. N. Y. The Clark Pomace Holder Company against William H. Ferguson. Plaintiff's Exhibit No. 4. J. M. R."

Next, an assignment of a one-fourth interest in said patent No. 187,100 from Charles G. Hampton to George B. Boomer, dated April 10, 1877, recorded February 4, 1878, at the Patent Office at Washington, in Liber W 22, page 387, of Transfers of Patents. Marked "U. S. C. C., N. D. S. N. Y. The Clark Pomace Holder Company against William H. Ferguson. Plaintiff's Exhibit No. 5. J. M. R."

Next, an assignment of a one-fourth interest in the above patents by Charles G. Hampton to the Clark Pomace Holder Company, dated October 15, 1878, and recorded October 18, 1878, in Liber B 23, page 411, of Transfers of Patents. Marked "U. S. C. C., N. D. S. N. Y. The Clark Pomace Holder Company against William H. Ferguson. Plaintiff's Exhibit No. 6. J. M. R."

Next, an assignment from George B. Boomer to the Clark Pomace Holder Company of a one-fourth interest in said patent, dated October 15, 1878, recorded October 18, 1878, in Liber H 23, page 410, of

Transfers of Patents. Marked "U. S. C. C., S. N. D. N. Y. The Clark Pomace Holder Company against William H. Ferguson. Plaintiff's Exhibit No. 7. J. M. R."

37 Plaintiff's counsel offered in evidence the certificate of incorporation of the Clark Pomace Holder Company certified by the Secretary of State as being a copy of the certificate on file in that office, dated October 14, 1878, filed in secretary of state's office October 15, 1878, certified on October 21, 1878, by the clerk of Onondaga county. Marked "U. S. C. C., N. D. S. N. Y. The Clark Pomace Holder Company against William H. Ferguson. Plaintiff's Exhibit No. 8. J. M. R."

CLARENCE PACKER being duly sworn, testified as follows:

Examined by Mr. WARD:

1 Q. Where do you reside?
A. Albany, 470 Madison avenue.
2 Q. What is your business?
A. Manufacturer of champagne cider.
3 Q. How long have you been engaged in that business?
A. Two years and some over.
4 Q. Will you look at that patent (Plaintiff's Exhibit No. 1 shown witness)? From that patent, the printed specifications and figure, could you construct and use the improvement therein described?
A. Yes, sir; I think I could.
5 Q. Have you ever used it in your business?

Objected to by defendant's counsel on the ground it has not been shown he is an expert.

A. Yes, sir.
6 Q. You manufacture sweet cider in your business?
A. Yes, sir.
7 Q. How much did you make last year?
A. Well, I don't know as I could tell to a certainty, but somewhere between three and five thousand barrels.
8 Q. Did you use that improvement in your manufactory last year?
A. Yes, sir.
9 Q. *It is* capable of the use for which it is *asked*?
A. Yes.

38 Cross-examination by Mr. King:

10 Q. Where is your place of business?
A. 61 Quay street.
11 Q. How long have you been there—all the time you speak of, two years?
A. No, sir; since a year ago May first.
12 Q. Have you a partner?
A. Yes, sir.
13 Q. Who is he?
A. Ralph Boyce.

14 Q. Whose presses are you using?
A. Boomer & Boschert, Syracuse.
15 Q. When did you buy them?
A. Year ago this fall.
16 Q. Of whom did you buy them?
A. Direct from the company.
17 Q. You mean the Boomer-Boschert Company?
A. Yes, sir.
18 Q. Just state exactly what you use in connection with that press—whether you use more than one press or not?
A. One press.
19 Q. Only one press?
A. Yes, sir.
20 Q. State exactly what it is?
A. The whole process of laying up a cheese?
21 Q. No; state exactly about this press, what you use it for.
A. I don't know as I exactly understand your question.

Plaintiff's counsel objected to the question as irrelevant.

22 Q. Question repeated.
A. You want me to describe what we use about the press?
23 Q. I want you to describe the press.
A. Give a description of the press?
24 Q. And exactly what you use.
A. I don't know as it would be an easy matter to describe it without an illustration at hand to explain it.
25 Q. Give us as good a description as you can without the illustrations.
A. In the first place, the press consists of a base beam connecting with a beam similar at the top, which is connected with the one beneath by four large rods; on this base there is a movable platform on which is built the cheese; this platform holds two cheeses;
39 this platform is on wheels and track, and is capable of being moved so that one cheese is brought under the press while the other end is out beyond the press, so that the cheese can be taken off or put on while the other is being pressed; then what is called the platen or follower, which is joined with the top beam of the press by toggle-joint arms, through the joints of which a large screw reaching beyond the end of the press is fixed; this screw has a large wheel-chain about the wheel, from which the power is received. The turning of this wheel either one way or the other raises or lowers the platen of the press. The cheese is built on this press, first by laying a rack on the bed of the press, platform of the press; on this is laid a form; over the form a cloth extending beyond the sides of the form all around; this is filled with pomace level full; the ends of the cloth are then lapped over the top of the pomace, the form taken off, and another rack placed on; so on, layer upon layer, until the requisite number has been attained; then the cheese is ready for pressing.
26 Q. What has been your business before going into the manufacture of cider?

A. Going to school.

27 Q. Immediately before?

A. Yes, sir—to any extent.

28 Q. How old are you?

A. 22 years old.

29 Q. Never been in the carpentering business?

A. No, sir.

30 Q. Never was a machinist?

A. No, sir.

31 Q. Never aided in the construction of any machine or press?

A. No, sir.

32 Q. Have you a license in the Clark Pomace Holder Company?

A. Yes, sir.

33 Q. For what?

A. This license is granted with the sale of every press that Boomer & Boschert sell. They, in the first place, pay a license, and it is made up in the cost of the press. We have no direct license.

34 Q. How do you know that you have a license then? Have you any paper?

A. I have the guarantee of the Boomer & Boschert Press Company.

35 Q. What is the nature of the guarantee?

A. Printed statement in all their circulars.

36 Q. Have you nothing excepting circulars?

A. No, sir.

37 Q. You don't know whether the Boomer-Boschert Press Company has paid anything to the Clark Pomace Holder Company for their machines or not?

A. Nothing more than their statement contained in the circular to that effect.

38 Q. You have no evidence yourself?

A. No, sir.

39 Q. You spoke about racks. What sort of racks is it that you use?

A. The racks consist of slats an inch by a half; the length varies according to the size of the press; inch one way by a half the other. These strips are joined together by four or five cross-pieces; I don't remember which.

40 Q. These racks are similar to those wooden racks you find in the bottom of street cars, are they not?

A. Similar; yes.

41 Q. They are similar to the racks used by butchers for placing meats?

A. Well, similar; yes. Still they are decidedly dissimilar in some respects.

42 Q. These racks are similar to those you find over openings of areas, coal holes, things of that description, excepting one is iron?

A. In gratings of that kind and other gratings you have described most of them have been joined together either by ropes or iron passing through. Taking horse-car gratings there is a rope which runs through each slat of the racks.

43 Q. Some of them, and some of them do not?

A. These are joined together by strips nailed across the tops; with that difference they are very similar.

44 Q. Did I understand you to say that you use cloth?

A. Yes, sir.

45 Q. What sort of cloth is it?

A. Cloth manufactured especially for that purpose by the Boomer-Boschert Press Company; I don't know whether they manufacture it; they supply it.

46 Q. Are they cloth manufacturers?

A. That I don't know.

47 Q. What is their business?

A. Manufacturing of all manner of presses, cider, lard, etc.

41 48 Q. This cloth is similar to cloth you buy in ordinary dry goods stores?

A. No, sir; it is similar to nothing I ever saw, unless it is sacking that comes around hop bales—something like that; made of an entirely different quality of goods.

49 Q. Merely stouter?

A. It is made of cotton and they are made of something else; I don't know what.

50 Q. What is the nature of the form you speak of?

A. It is simply box shape, with neither top or bottom to it.

51 Q. You have seen the four sides of a box without a top?

A. Yes, sir.

52 Q. How long ago?

A. I don't know as I could date exactly; I presume it was about the time I was able to recognize anything of that kind.

53 Q. How long have you seen these racks similar in construction to those?

[A.] The first time I ever saw racks exactly like these was, I think, five years ago this fall.

54 Q. Where?

A. At Oliver Brothers' cider mill at Lockport, N. Y.

55 Q. What else did you see there?

A. I saw pretty nearly the whole contents of a cider mill.

56 Q. What time was this in the fall?

A. I couldn't tell you; some time between the first of September and the first of January; just when I couldn't tell.

57 Q. Hadn't you seen racks similar in construction before that for other purposes?

A. For other purposes than cider making?

58 Q. Yes.

A. No, sir; unless you consider those in horse-cars under that head; if you do, then I should say yes.

59 Q. That is a rack, isn't it?

A. Yes, sir.

60 Q. When did you see those first?

A. The first car I can remember of had them in.

61 Q. How many years ago?

A. Fifteen or twenty.

62 Q. Cloth has been used for straining purposes ever since you can remember, has it not?

A. Yes.

63 Q. What was the purpose of this cloth that you used—straining?

A. That we used in the process of manufacturing cider?

64 Q. Yes.

42 A. Well, the main purpose in the using of the cloth is to keep the pomace in place while it is being pressed; the straining process probably comes under the head of refining.

65 Q. It also acts as a strainer; that is, the juice percolates through the cloth while the pomace is being pressed?

A. Yes, sir.

66 Q. You have known of cloth being used in other cases for the purpose of keeping pomace in place, have you not?

A. Yes, sir; not that kind of cloth.

Plaintiff's counsel admits that cloth has been used in the manufacture of cider for more than two years prior to September 11, 1876.

67. Q. What is your special business in this firm?

A. Taking almost entire control of the business and taking charge of the refining department.

68 Q. You don't mean to say by that you lay up these cheeses?

A. I have done so; yes, sir.

69 Q. That isn't your general business?

A. No, sir.

70 Q. What is the amount of license they pretend to require?

A. I believe it was ten dollars. Knowing the license was paid by the company I paid no particular attention to it one way or the other.

71 Q. Have you no papers to show it?

A. No, sir.

ELMER GOODFELLOW, being duly sworn, testifies as follows:

Examined by Mr. WARD:

1 Q. Do you know the defendant, William H. Ferguson?

A. I do.

2 Q. Did you know him during the fall of 1880 and the winter of 1881?

A. Yes, sir.

3 Q. Did you work in his cider mill for him?

A. Yes, sir.

4 Q. Where is his cider mill?

A. It is in New Scotland, I believe, isn't it?

5. Q. Town of New Scotland?

A. Yes, sir.

6 Q. In what county?

A. Albany.

7 Q. What was your business while you worked there?

A. Most anything that came handy.

43 8 Q. Did you help lay up cheeses?
A. Yes, sir.
9 Q. And help make cider?
A. Yes, sir.
10 Q. Will you go on and explain the method by which the cheeses were laid up?
A. In the first place there was a rack laying on a platform and a form placed onto that and cloths onto that.
11 Q. How was the cloth placed on?
A. Just placed over so that the edge extended over the form; then it was placed even full of pomace, or level full, and the cloths were lapped over; then the form taken off and another rack.
12 Q. And different layers of cheese laid up in that way?
A. Yes, sir.
13 Q. Did this rack extend beyond the bottom girts of the form?
A. Yes, sir.
14 Q. About when did you commence to work for defendant?
A. Well, I think it was in October.
15 Q. When did they commence making cider?
A. They were making cider when I came there.
16 Q. How long did they continue to make?
A. Until some time in the winter; I couldn't tell just when.
17 Q. In March?
A. No.
18 Q. In February?
A. I think it was along about New Year's, as near as I can get to it.
19 Q. Will you swear they didn't make any after New Year's?
A. No, I won't; I wasn't there all the time.
20 Q. Weren't you there any after New Year's?
A. Yes; I was there.
21 Q. Didn't they make a good deal after that?
A. That is something I couldn't tell.
22 Q. Don't you know they made some after that?
A. I couldn't say positively whether they did or not.
23 Q. They made a good deal during the time you were there?
A. Well, yes; considerable.
24 Q. And laid up the cheeses in the way you have described?
A. Yes, sir.
25 Q. Did they lay up the cheeses all the while that way?
44 Did they have any other system of laying up cheeses besides the one you have described?
A. Not in general use that fall there wasn't any.
26 Q. Did they lay up any at all that fall in any other way?
A. Not when I was there.

Cross-examination by Mr. KING:

27 Q. Is Ferguson making cider this fall?
A. Yes, sir.
28 Q. Are you using any system other than you have described on

your direct examination this fall? Are you using an improved form of laying up cheeses?

A. Yes, sir.

29 Q. Just tell what that form is.

Plaintiff's counsel objected to asking in regard to any other form than that in the patent.

A. It is a rack turned up on all four sides.

30 Q. Anything else?

A. Not that I know of.

31 Q. This is under Mr Ferguson's own patent?

A. Yes, sir.

32 Q. You have seen racks before similar to these racks that you have described that you said were used last year?

A. Yes, sir.

33 Q. How long ago?

A. I don't know; I couldn't say just when, but I seen them quite a number of years ago.

34 Q. How many do you think?

A. I think I saw them four or five years ago.

35 Q. Any longer than that?

A. I wouldn't want to say positive I did, but I might have.

Redirect examination by Mr. WARD:

36 Q. In what way do the racks they now use differ—the racks and forms differ from the racks and forms they used before?

A. Well, they differ because the form and rack is all one.

37 Q. How is the form made in this that they use now?

A. Four sides of the slats turn up of the rack.

38 Q. When it is turned up does it make a form just the same as though it was another form laid on top of the rack?

A. I suppose it would naturally answer the same purpose.

45 Mr. KING:

Q. You don't use the old style of form now?

A. No.

39 Q. In place of that you have the four edges of the rack turned up about four inches?

A. Yes, sir.

40 Q. They perform the same office that the form did before?

A. Yes, sir.

[40½] Q. After the cheese is put in, what is done with these sides?

A. Well, they are unhooked and turned down.

41 Q. Then do they look down or do they stand out straight?

A. They go whichever way they are pressed.

42 Q. Don't they usually stand out straight with the rack?

A. Yes, sir.

43 Q. After they are laid down they are just the same thing as the rack was that was used with the old form?

A. Yes.

44 Q. What is the advantage gained by using this?

A. It saves handling the form.
45 Q. Is it quicker this way?
A. I should say it was.
46 Q. Is it easier?
A. Yes, sir.
47 Q. Does it save time?
A. It does.
48 Q. When you lay on a rack you have to bend up all these sides and fasten them up?
A. Well, yes, sir; of course you have.
49 Q. How long does it take to put up these sides?
A. I don't know; I never timed myself about it.
50 Q. How long do you think?
A. I haven't got no idea at all.
51 Q. A minute?
A. I don't think it does.
52 Q. Three-quarters of a minute?
[A.] It might not take over half a minute; according to how fast you work at it.
53 Q. Can you double up these four sides and fasten them in less time than you could pick up the form and put it on the rack if the form laid in convenient place?
A. I could.
54 Q. No matter how convenient the form should be?
A. I think I can.
55 Q. Can you unfasten them and let them down in less time than you could take the form off?
A. Yes, sir.
46 56 Q. Which would cost the most, to fasten these sides on a rack or make a form?
A. Well, I don't know; I suppose the cost of it would be the most in fastening the racks; at the same time you would save time, enough to pay for that.
56½ Q. How many racks are usually used in a cheese?
A. From nine to ten.
57 Q. How many hinges would be used in each rack?
A. Well, eight.
58 Q. Do you know how much hinges are worth?
A. No, sir; I do not.
59 Q. How is the form made, the old form, the cheese form?
A. Simply four sides of a box without top or bottom.
60 Q. How wide, how deep?
A. I most forget how many inches deep it was; think it was four inches.
61 Q. Four or five inches?
A. Four or five.
62 Q. And simply four boards four or five inches wide, the ends nailed together, with something in the corners to brace them?
A. Yes, sir.
63 Q. You know that would be a great deal cheaper than to put hinges on the rack, don't you?

A. Well, I know it would, but time is considered a good deal, too.

64 Q. How do you fasten these sides of the racks up when you double them up to receive the pomace?

A. They have two straight sticks with notches cut into them.

65 Q. How do you put them on?

A. You just merely pick them up and lay them on; that is all there is about it.

66 Q. Can one man stand on one side and put both on?

A. Well, I don't know as he can, not to an advantage; he can do it, but not to an advantage.

67 Q. Can he stand on one side and double up the four corners, the four sides of the rack?

A. I have done it.

68 Q. Stood on one side and doubled up the four sides of the rack?

A. Yes, sir.

69 Q. And put the fasteners on?

A. Yes, sir.

70 Q. Is it convenient to do that?

A. Well, it isn't supposed to be.

71 Q. Would it be the usual method which a workman
47 would do if he was making cider, if he was working alone; would it be the usual method to stand on one side and double up the four corners?

A. I suppose he would walk around to do it the quickest, to do it the easiest.

72 Q. In letting them down, could you let them down standing on one side?

A. Oh, yes.

73 Q. That would be the usual and easiest mode of doing it?

A. I should suppose so.

74 Q. When these sides are turned up it is substantially the same thing as a rack with a form on?

A. It answers the same purpose.

75 Q. It is substantially the same thing?

A. Oh, no, I shouldn't think it was; a form is all in one.

76 Q. Mechanically it is used for the same purpose and answers the same?

A. It does.

77 Q. When the sides are turned pomace it is an extended down rack, isn't it; it extends beyond the cheese around on every side?

A. Yes, sir.

78 Q. And performs the same office, the same work that the racks that were used last year?

A. Yes, sir.

79 Q. Doesn't this whole contrivance accomplish substantially the same results as the rack and form you used last year and perform the same functions as the rack and form you used last year?

A. Well, I don't know; I suppose it does in one sense of the word, only it is quicker.

Recross-examination by Mr. KING:

80 Q. How many men does it usually take to lay up a cheese?
A. They usually have three at it, two to lay it up.
81 Q. One man can't do it very well, can he?
A. I never saw one man do it to advantage yet.
82 Q. Can't handle the form; they are very heavy, aren't they?
A. There are some of them heavy.
83 Q. One man can't handle the form readily?
A. Not and do it handily.
84 Q. Not and get the form on perfectly?
A. No, sir.
85 Q. So that one man will stand on each side of the cheese?
A. Yes, sir.
48 86 Q. In locking or unlocking this improved device of Ferguson's neither man is required to go around the press, is he?
A. No, sir.
87 Q. He either locks or unlocks from his one position?
A. Yes, sir.
88 Q. There is no moving of the form from one part of the room to the press?
A. No.
89 Q. No taking the form from the press to any other part of the room?
A. No, sir.
90 Q. The form and press and everything is right on the press itself, is it not?
A. Yes, sir.
91 Q. This is a hinge process?
A. I believe so.
92 Q. Two hinges on each side?
A. Yes, sir.
93 Q. Allowing each side to lap up?
A. Yes, sir.
94 Q. When this is laid up the rack itself does not extend beyond the form, does it?
A. No, sir.
95 Q. The rack and form are together—are united?
A. All in one.
96 Q. There is no extension of any kind? This rack does not extend at all, under any consideration or in any way, under the form itself?
A. No, sir.
97 Q. Or beyond the form?
A. No, sir.
98 Q. It takes considerable time moving racks to and from the press, does it not—the old form?
A. Yes, sir.
99 Q. In this way all that time is saved?
A. Yes; besides that, the form is in the way a good many times.

100 Q. Would it cost any more to buy eight hinges and put them on than it would be to buy four strips of board and nail them together and put four pieces in the corner for braces?

A. I don't know hardly how that would be; I don't think it would cost a great deal more.

101 Q. You don't think it would cost any more, do you?

A. I don't know as it would, hardly.

Redirect examination by Mr. WARD:

102 Q. One cheese form is used for two sets of racks in the old way?

A. Yes, sir.

103 Q. What are the hinges made of that are used on these racks?

A. They are made of some kind of iron.

49 104 Q. Does the acid from the cider act on this iron at all?

Objected to by defendant's counsel as wholly immaterial and irrelevant.

105 Q. Isn't it a fact that the acid in the cider acts upon these iron hinges and wears them out sooner?

Objected to by defendant's counsel on the ground witness is not shown to be an expert in cider making.

A. I don't know as it injures them any; I haven't seen them injured yet any.

106 Q. How long have you used these racks?

A. Ever since we made cider this fall.

107 Q. How long is that?

A. I don't know exactly what time we did start in.

108 Q. Earlier than this month?

A. Yes.

109 Q. Hasn't any of the hinges given out?

A. Not that I have seen.

110 Q. In taking these racks off and putting them on the cheese aren't these sides more likely to be broken and to give out than a cheese form would be?

A. I don't know that I have seen any of them give out yet.

111 Q. How heavy is the cheese form you used last year?

Objected to by defendant's counsel as not being brought out on the cross-examination, and incompetent.

A. I never weighed it.

112 Q. How heavy do you think?

A. I haven't got any idea exactly; according to whether there is pomace on it, or whether it is soaked, or whether it is clean.

113 Q. Did it weigh ten pounds, do you think?

A. I should think it would weigh as much as that.

114 Q. Is it as heavy as a rack with the patent hinges on?

A. Oh, no, not as heavy as the whole thing together.

115 Q. Is it as heavy as the rack was before these patent hinges and sides were put on?

A. I don't know; I guess there isn't a great deal of difference.

Re-cross examination by Mr. KING:

116 Q. Is this improved rack and form that you are using now any heavier than the old rack was?

A. Well, I don't know as it is any heavier.

117 Q. You get rid of that additional weight of the form, do you not, by using this process?

A. Yes, sir.

118 Q. The combined weight of the old form and rack was a great deal more than the combined weight of the present improved rack?

A. Yes, sir.

119 Q. The difference would be the weight of the form itself?

A. Well, I should suppose it would be. The hinges, of course, don't weigh enough to amount to anything.

120 Q. Do you know whether there is a metal which can be used which is proof against the acids of cider?

A. I think there is by what I have read in papers.

Plaintiff's counsel objected to the answer.

A. I don't know as I have ever seen any.

121 Q. Have you read of any such thing?

A. Yes, sir.

122 Q. Have you acquired any knowledge, by means of newspapers and books, of such metal?

A. Yes, sir; I have.

123 Q. Do you know whether the hinges Mr. Ferguson was getting made for him are anti-acid proof?

A. I don't know for sure.

124 Q. Have you been so informed by Mr. Ferguson?

A. I have; that he was getting those hinges.

Redirect examination by Mr. WARD:

125 Q. Aren't some of these new forms made by sawing the edges off of the old form, nailing on a slat to hold the edges together, and putting the hinges on the old racks?

A. I have never seen them make any of them.

126 Q. Don't you know that some of the new racks are made that way?

A. I couldn't say positive, for I never seen them make them.

127 Q. You wouldn't say whether they were made from the old racks or not?

A. I couldn't say positive.

128 Q. Don't you think they are made from them?

A. You wouldn't take that a minute ago.

129 Q. I ask you now; have you any doubt whatever that they were made from the old racks?

A. Well, I don't know; I can't say that they were or that they were not.

130 Q. Have you any doubt but what they were?

Objected to by defendant's counsel as improper in form.

A. Hard question for me to answer.

131 Q. You know whether you have any doubt whether they were made from those old racks or not—whether those new ones were made from the old ones or not?

A. The only answer I can give you to that, I don't know.

132 Q. You don't know whether you have any doubt or not—whether you now have any doubt whether he did it or not; what — you think?

A. I don't know whether I have got any right to say that or not.

133 Q. You have a right to say it, and you must say it.

A. What I think is different from what I know.

134 Q. What is your answer?

A. Well, I can say I think he did; I don't know for certain.

135 Q. You saw the old racks before they were used?

A. Well, yes.

136 Q. And these racks he uses now are in every shape the same as though they had been sawed from the old ones?

A. They are the same shape. They are smaller; that is all the difference.

137 Q. The sides that are turned up are just the same as they would be if they were sawed from the old racks?

A. I think it is a little bit wider.

138 Q. How much wider—more than what would be made up by the hinges being put in?

A. I don't know just how much; somewhere about an inch; something like that.

Recess.

Afternoon session.

JOHN L. PEMBERTON, being duly sworn, testifies as follows:

Examined by Mr. WARD:

Q. 1. What is your name?
A. John Lewis Pemberton.
Q. 2. Where do you live?
A. Guilderland.
Q. 3. Do you know William H. Ferguson?
A. Yes, sir.
52 Q. 4. Where does he live?
A. He lives in New Scotland.
Q. 5. In what county is that?
A. Albany.
Q. 6. What is his business?
A. Cider and farming.
Q. 7. Did you ever work for him?
A. Yes, sir.
Q. 8. When?
A. 1876 and 1877.
Q. 9. Did you work for him in the falls of 1878 and 1879?
A. No, sir.

Q. 10. Didn't you work for him two years ago this fall?
A. No.
Q. 11. Did you work for him the year before that?
A. I worked for him in 1876 and 1877.
Q. 12. Did you work for him two years ago this fall?
A. No, sir.
Q. 13. Didn't you tell me when I subpœnæd you that you worked for him a year ago last fall and the year before that?
A. If I did I misspoke myself.
Q. 14. How long ago was 1876 and 1877?
A. Six years ago.
Q. 15. Have you worked for him any since that?
A. I worked for him a little while, but didn't make cider for him.
Q. 16. Haven't you worked for him since 1877?
A. I couldn't say for certain whether I have or not.
Q. 17. Will you swear you didn't work for him a year ago last fall?

Objected to by defendant's counsel as immaterial.

Q. 18. Did you work for Ferguson a year ago last fall?
A. I don't know as I did.
Q. 19. Where did you work last year?
A. I was to Coon Fryer's last year.
Q. 20. What year was that?
A. 1880.
Q. 21. Where did you work the year before that?
A. I was to Fryer's.
Q. 22. How long?
A. I worked there in the fall.
Q. 23. Do you ever remember being kicked out of Ferguson's cider mill and having your head poked through a window?

Objected to by defendant's counsel as immaterial.

53 Q. 24. Do you remember having any trouble with him about tobacco?
A. Yes, sir.
Q. 25. When was that?
A. I couldn't say when it was hardly.
Q. 26. Will you swear it wasn't in the fall of 1879 or winter?
A. I won't swear to it; I couldn't tell you when it was.
Q. 27. Was it in 1877?
A. I couldn't tell you.
Q. 28. Who have you talked with about being examined here?
A. Nobody.
Q. 29. Who told you it was in 1876 and 1877 that you worked there? Didn't any one tell you so?
A. No, sir; my mother told me when it was.
Q. 30. Told you it was 1876 and 1877?
A. Yes, sir.
Q. 31. When I subpœnæd you didn't Ferguson tell you it was 1878 and 1879 when you worked there?

A. I couldn't tell you; he might have said it; I didn't hear it.
Q. 32. How old are you?
A. 17.
Q. 33. When were you 17?
A. I couldn't tell you the day or the month.
Q. 34. Can you tell what month?
A. No, sir.
Q. 35. Can you tell what season?
A. In the fall.
Q. 36. How old were you when you worked to Ferguson's?
A. (No answer.)
Q. 37. What did you do when you worked there?
A. Helped pick apples and make cider.
Q. 38. What did you do towards making cider?
A. Helped grind the apples and helped lay up the press.
Q. 39. Helped lay up the cheeses?
A. Yes, sir.
Q. 40. How many cheeses do you think you helped lay up during the fall of 1877?
A. Couldn't tell you?
Q. 41. Twenty?
A. I don't know.
Q. 42. Did you make a business of it to help lay up part of the time?
A. I helped lay up pretty near all the cheeses that were laid up while I was there; I think I did.
Q. 43. Were you in the mill during the fall of 1878 any?
A. No.
Q. 44. Wasn't in the cider mill during the fall of 1878?
A. I wasn't working in it; I might have been in it.
54 Q. 45. Were you in the mill during the fall of 1879?
A. I couldn't tell you whether I was in it or not.
Q. 46. You don't remember?
A. No, sir.
Q. 47. Did you see him make cider while you were in the mill the fall of 1878—see him lay up cheeses?
A. I couldn't tell you whether I was there or not.
Q. 48. Don't you remember being in the mill at all in 1878?
A. No, sir.
Q. 49. Do you know there is a penalty attached if you are convicted of swearing to a lie here?
A. No, sir.
Q. 50. You don't know that there is any law against it?
A. No; I don't know as I am swearing to a lie.
Q. 51. Do you know that there is any penalty that you are incurring if it is proved that you swear to a lie?
A. No; I try not to swear to a lie.
Q. 52. How did they lay up cheeses in the fall of 1877, when you helped work in the mill?
A. We would take and put a box on and then put cloths over the box and right down between the box and over the top of the box;

then they would put the pomace right down in there until they got one layer; then they would take and put another cloth right over that; then they would put a slat on and put the box on; then they would put another cloth over the box the same way.

Q. 53. How was the box made?

A. It was made out of four boards, and had two little blocks on one side, right against the side of the big box.

Q. 54. Was it made of four boards four or five inches wide, nailed together at the ends?

A. I guess they were inch boards nailed together.

Q. 55. I don't mean thick; I mean wide.

A. I should think they was.

Q. 56. That was the way it was made, four boards being nailed together at the ends?

A. Yes.

Q. 57. After they got the first layer of cheese on the press did they lift those boxes up a little and lay down a rack?

A. Yes, sir.

Q. 58. Then lay this box or frame on the rack and spread cloths over it?

A. Yes, sir.

55 Q. 59. And then fill it full of pomace?

A. Yes, sir.

Q. 60. And wrap the cloths over it and lift up the box and lay it on another rack?

A. After they got that cheese on they would spread cloth right over the top; after they got the side of them all turned up, then they would take and lay a cloth all over the top; then they would put the slat on.

Q. 61. On the bottom of the platform were there cleats nailed along the same as a rack would be—something the same as a rack?

A. There was cleats nailed right along into it.

Q. 62. On the bottom of the press?

A. Yes, sir.

Q. 63. Did the racks extend a little on each side outside of the cheese?

A. Outside of the box?

Q. 64. Yes.

A. Yes; they could set the box right on the layers.

Q. 65. That was in the fall of 1877?

A. Yes, sir.

Cross-examination by Mr. KING:

Q. 66. You don't remember how old you were in 1876, do you?

A. I should think I was about twelve years old or eleven years old.

Q. 67. Have you been to school?

A. No, sir; not much.

Q. 68. Ever learn arithmetic?

A. No, sir.

Q. 69. What has been your business?

A. I have been working out ever since I was big enough.
Q. 70. How long ago was that?
A. Couldn't tell.
Q. 71. Can't you calculate the difference between 1876 and 1881?
A. Six years, ain't it?
Q. 72. Can you tell the difference between 1877 and 1881; now, how many years that is?
A. Five years.
Q. 73. Don't remember much about the whole thing, do you?
A. I remember about laying up the cider press.
Q. 74. Do you recollect whether you worked night time or day time?
A. Worked some of the time after dark and in the day time too.
Q. 75. What sort of light would you have at night to work by?
A. Candles and lanterns.
56 Q. 76. Could you put up these forms by candle light?
A. Lanterns and candles.
Q. 77. How many candles would you have?
A. I couldn't say.
Q. 78. This machine was worked by hand, was it?
A. Run with an engine.
Q. 79. What part did you do?
A. I done about everything.
Q. 80. Did you lift these forms and racks?
A. I helped.
Q. 81. How big was it; could you lift one side of it?
A. Yes.
Q. 82. What became of the pomace?
A. It was thrown outdoors.
Q. 83. Did you fill the pomace in these racks?
A. I would throw it down from above sometimes.
Q. 84. You would be working upstairs all this time?
A. Sometimes I would and sometimes I wouldn't be upstairs.
Q. 85. Where would you be the balance of the time?
A. Then I would be downstairs; I helped lay up more than I was upstairs.
Q. 86. Who do you say you are working for now?
A. Jake Cheesboro.
Q. 87. Where does he live?
A. In Guilderland.
Q. 88. Have you got any father or mother?
A. Got a mother.

GEORGE B. BOOMER, being sworn for complainant, testifies as follows:

Examined by Mr. WARD:

Q. 1. Where do you reside?
A. New York city, 130 East 104th.
Q. 2. Do you know John Clark, the patentee named in the patent 187,100?
A. I do.

Q. 3. Did you know him at the time this patent was issued?

A. I did.

Q. 4. Did you know of the patent being issued to him at the time it was?

A. I don't think I did—that is, I was not familiar with the facts of the case at that time, at the time of the issuing of the patent.

57 Q. 5. Do you know that at that time and immediately afterwards he put this improvement in use?

A. Yes.

Q. 6. Do you know when the Clark Pomace Holder Company was formed?

A. I knew at the time of the formation of the company.

Q. 7. Since that time has this improvement been put in use by the corporation and continued in use up to the present time?

A. It is.

Q. 8. What is your business?

A. My principal business is the sale of cider machinery.

Q. 9. Do you know whether or not this improvement is now generally used among cider makers?

A. It is in very general use.

Cross-examination by Mr. KING:

Q. 10. How long have you known Mr. Clark?

A. I think I first met Mr. Clark in 1873.

Q. 11. Where did he live at that time?

A. I think he was living in Pontiac, Michigan.

Q. 12. Where did you live at that time?

A. Syracuse, N. Y.

Q. 13. How often did you meet him?

A. I can't say; I met him a good many times in the course of 1873, 1874, and 1875.

Q. 14. When did he first talk to you in relation to this improvement—this device he pretends he patented?

A. I can't say.

Q. 15. Can't you give the year?

A. No, I can't give the date when he talked first of this particular device. I was familiar with the improvements of Mr. Clark from about the very first of his experiments, before he got up this plan of cheese.

Q. 16. What was his first plan?

A. The first that I knew anything about was using racks and cloths with a crib.

Q. 17. How long ago was that?

A. It was soon after the date of his first patent, fall of 1873. I think that is when I first met Mr. Clark and when I first began to talk about the cider business and these systems of laying up the pomace.

58 Q. 18. Did you make any suggestions to him in relation to any improvements of this device?

A. I don't know that I did.

Q. 19. You had sundry conversations with him about the matter didn't you?

A. Yes, sir.

Q. 20. Can't you state exactly what the conversations were?

A. No; I could not after this.

Q. 21. Did you find any fault with this idea of his?

A. The first plan; yes, sir, I did.

Q. 22. What was the fault you found?

A. I didn't like his pliable racks; that was one of his hobbies.

Q. 23. Did you suggest making the rack rigid?

A. I might have done so; I presume I did.

Q. 24. You found fault with its being pliable?

A. Yes.

Q. 25. And you think you suggested the rigidity of the rack itself?

A. The rigid rack was in use at that time.

Q. 26. About what time was your suggestion made?

A. I can't remember the dates. These conversations occurred from time to time all through those first years after the issuing of the patent.

Q. 27. After he got out his first patent?

A. Yes, sir.

Q. 28. And before he got out his second?

A. After he got out his second patent I had a great many conversations with him.

Q. 29. I mean in relation to this rack, especially whether it should be pliable or rigid; was that between the time of his filing his application for the first patent and the time of his filing his application for the second?

A. I think I made a suggestion of that sort from time to time.

Q. 30. What other fault did you find?

A. At what time do you refer now—between the two patents?

Q. 31. Yes.

A. I don't remember. The principal objection that I used to make to Clark's system which he tried to introduce the first years of his experiment was to the pliable rack.

Q. 32. Did you suggest altering this crib to a form?

A. No, sir.

Q. 33. Any conversation in relation to that; had you any
59 objection to the crib itself?

A. Not until I saw his form, a new way of laying up cheese.

Q. 34. When did you first see his form?

A. It was either in the fall of 1874 or 1875; I don't remember now which; it was nearly two years before he made the application for his last patent. I remember that distinctly.

Q. 35. Are you a member of the firm of Boomer & Boschert, of Syracuse?

A. I am.

Q. 36. Is that an incorporated company?

A. It is an incorporated company.

Q. 37. Was it incorporated in 1874?

A. I think it was; yes, sir.

Q. 38. Did you publish a paper at that time called the Boomer and Boschert Press?

A. We might have done so; we have published a trade circular or paper several times.

Q. 39. Would you remember if your attention was called to that fact by the paper itself?

A. Yes, sir; would be very apt to.

Q. 40. (Paper shown witness.) Was that paper ever published by your company?

A. Yes.

Defendant's counsel offered the paper in evidence, marked "U. S. C. C., N. D. S. N. Y. The Clark Pomace Holder Company ag'st William H. Ferguson. Defendant's Exhibit No. 1."

Q. 41. Do you recollect any other suggestion you made, any objection to this device?

A. I don't remember any at the present time

Q. 42. Has this device ever been at any fair?

A. Yes, sir.

Q. 43. What year?

A. I think it was shown that year, 1874.

Q. 44. Was it before that?

A. I think not.

Q. 45. Was it in 1873?

A. I think not; not this device.

Q. 46. What device was shown in 1873?

A. Do you mean to present that question broadly or do you mean to apply it to me individually?

Q. 47. Boomer and Boschert Press Company.

A. I think the crib was shown in 1873.

Q. 48. Did you show a rack in 1873?

A. I think so.

60 Q. 49. Show a cloth in 1873?

A. Presume I did.

Q. 50. Show a form in 1873?

A. I think not.

Q. 51. You are not positive about it?

A. Well, yes, I am positive I showed a crib in 1873—old device crib.

Q. 52. You manufactured lard presses at that time, didn't you?

A. I did.

Q. 53. What was the process of pressing lard that year?

A. We used to use the hoop.

Q. 54. Hoop for a form?

A. Yes, a hoop to contain the cheese.

Q. 55. Would you have a rack there?

A. No, sir.

Q. 56. Have you ever seen a form used that Tallmadge had on the fair ground in 1873?

A. I presume so; I probably built it for him; our concern did.

Q. 57. Do you recollect what that was?

A. That was a crib, racks and cloths, I think; that is what we have been using at least prior to the use of this patent of Clark's.

Q. 58. A crib is nothing more than an extended form, is it not.

A. A crib is laid up outside of the cheese, outside of the racks, and holds the cheese in place; it is used for that purpose.

Q. 59. In this Tallmadge form the racks extend underneath the form itself?

A. No.

Q. 60. Are you positive about that?

A. The racks may have extended; I don't remember; there might have been a rack on the bottom that extended out so far as to allow the cheese to be built up on top of it possibly.

Q. 61. Did you make any suggestion of that character to Mr. Clark of the extension of the rack underneath the form?

A. Not that I remember of?

Q. 62. Did you ever state to William H. Ferguson, defendant, that you had made sundry suggestions in relation to the improvement of this device to Mr. Clark before he made his application for a patent?

A. Possibly.

Q. 63. Do you remember whether you did or did not?

A. I don't now.

Q. 64. Don't remember having a conversation with him at Syracuse within the last six months?

A. Yes, I remember meeting him there.

61 Q. 65. Since the commencement of this action?

A. I think so.

Q. 66. Don't you remember that upon that occasion you stated to Mr. Ferguson that you had suggested some improvements to Mr. Clark before he made his application for this device?

A. No, sir; I don't remember any such statement.

Q. 67. Did you state to him that you had made suggestions to Mr. Clark?

A. I don't remember of making any such statement to Mr. Ferguson.

Q. 68. Will you swear you did not?

A. No, I wouldn't swear I did not.

Q. 69. Has this Clark Pomace Holder Company a manufactory?

A. No, sir; I think not.

Q. 70. Are you a member of that company—an officer of that company?

A. I am.

Q. 71. What position do you hold there?

A. I am a director.

Q. 72. Any other office?

A. Vice-president.

Q. 73. You ought to know whether they manufacture any of these presses?

A. No, sir; I don't think they do.

Q. 74. You know they do not?

A. Practically, I am certain they do not.

Q. 75. Then by whom are they manufactured?

A. This pomace holder you refer to?

Q. 76. Yes; the patent.

A. Manufactured by anybody that wants to use them; there is a license for the privilege of using them; a great many make their own; the Boomer Press Company manufactures them for sale.

Q. 77. The Clark pomace holder has never received any profit from the manufacture and sale of this device?

A. No, sir, I think not; they charge a license for the use of it and receive their profit in that way.

Q. 78. Did Mr. Clark ever make any of these devices and sell them?

A. I think he did.

Q. 79. Do you know whether he did or not?

A. I have heard him say that he did, and I have seen his circular, in which he appears to make and sell them.

62 Q. 80. How long usually before you publish your circular do you get up the matter for them?

A. We usually publish them just as soon as the matter is ready.

Q. 81. How long usually does it take to get the matter ready?

A. Sometimes three days and sometimes three weeks, according to what the circular is.

Q. 82. How long does it usually take to get up one of these papers?

A. A week or ten days.

Q. 83. Will you be kind enough to state the day of this paper? (Defendant's Exhibit No. 1.)

A. I can't state the exact date, but I think that paper was printed some time in September, 1874; I can't do it; I remember receiving the first copy that I saw of the paper at Columbus during the Ohio fair, and it wasn't issued when I left home, and I think that fair was held some time about the 20th of September.

Q. 84. Then it must have been published in time to get there by mail?

A. Yes, sir.

Q. 85. Who writes the articles for those papers usually?

A. I have written some of them; Mr. Dunning some.

Q. 86. Do you recollect who wrote the articles for that paper?

A. They were not all written by the same person.

Q. 87. For instance, that upon the third column, the article, "Laying up the Cheese?"

A. I think I wrote that myself, but I am not certain about it.

Q. 88. Will you be kind enough to read from this paper of Boomer and Boschert Press, dated Syracuse, N. Y., September, 1874, the article under the title, "The Best System yet Devised," contained in the third column of the first page?

A. "It is to last year's experience that we are indebted for the most sensible plan for laying up cheese, a plan which, we predict, will be speedily adopted by all wide-awake cider makers, although perhaps it has not yet been sufficiently tried to establish its merits; yet, as it has been successfully put in use by several parties, there

seems to be no question as to its feasibility. It is as follows: Commence on the platform of the press and lay a rack; place thereon a form three and a half inches deep and from four to six inches smaller each way than the rack. Over this form spread a cloth, and fill
63 the form even full of pomace; then turn in the sides and ends of the cloth over the pomace, the cloth being of sufficient size to just cover the pomace. The form is then raised and another rack placed on the layer of pomace just formed, the form being placed on this new rack, a cloth again spread over it and another layer of pomace put in as before. Ten or twelve racks are used in one cheese and as many cloths less one. When the last layer is formed the form is taken off and a rack placed. The follower is then put on and the pressing commenced. A guide should be used in laying up the cheese, so as to have the form cover every time directly above the last layer, and strong guides should be used to support the racks on the edges to prevent any liability of their moving sideways.

"*The Racks.*

"The following is a figure of the rack: The racks are made of basswood strips one-half inch thick by three-quarters inch wide, placed one-quarter inch apart, with a beveled strip about two inches wide nailed across each end. This piece should be beveled, as seen in the cut. Good clinch nails should be used, and the racks should be about four feet six inches by four feet eight inches square for a cheese of ten barrels. The form should be four feet square inside, made by nailing boards one inch thick and three and one-half or four inches wide together in the form of the sides of a box. It should be stiffened by corner pieces on the outside."

Q. 89. Will this refresh your memory in reference to the extension of a rack underneath the crib in the Clark patent?

A. That is another rack, I guess.

Q. 90. Did you write that advertisement? (Showing witness paper.)

A. I don't think I did.

Q. 91. In this paper, in the second column of the fourth page, is this found: "The hoop, the crib, and the rack systems are now most commonly in use among our best cider makers. For advantages in convenience, in saving time, and in properly filtering we give preference to the latter system." Will you be kind enough to
64 read from the fourth column, last page, under the head of "Clark's Cider and Wine Press Crib or Pomace Holder," the fifth paragraph?

A. "Directions for laying up the cheese: Lay down one of the pomace racks with the centre under centre of follower, with the strings lengthwise with the follower, and place the form on that. Spread a cloth over the form long way across the follower; fill the form level full with pomace; fold the cloth over top, sides, and ends; then raise the form, spread on another pomace rack on the layer of pomace, and bring the form down again to its place. Continue this until ten or more layers are put up; remove the form from the press;

lay on last pomace rack, then the blocking, and apply the press; remove the cheese by rolling up the pomace racks, then the cloths containing the pomace."

Q. 92. Then, also, the fourth paragraph, as follows: "To make the form or rim, take four pieces of inch stuff three inches wide and notch them together so that it will be four feet six inches long and three feet six inches wide inside."

Q. 93. Also the paragraph, "This invention is secured by letters patent granted March 30, 1874," and winds up as follows: "Address John Clark, patentee, 28 Atwater street, Detroit, Mich., or Boomer & Boschert Press Co., agents for New York, Syracuse, N. Y."

Q. 94. The article, if you wrote it, was true at the time you wrote it, was it not?

A. I think it probably true.

Q. 95. Then if, as you state in the article, you are indebted to last year's experience in getting this new idea, to whom do you refer when you use the words "we are indebted"—had it reference to yourself?

A. I suppose it relates to cider makers.

Q. 96. Then the statement is true that you knew of the existence of this particular device before a year prior, or more than a year—about a year prior to the writing of that article?

A. No, sir.

Q. 97. What do you mean by that?

A. I will say that I didn't know anything about that system of laying up a cheese until, I think, in August of 1874.

65 Q. 98. You did know about it in August, 1874?

A. I am not certain even of that, August or September. I knew of it before I wrote that article; no doubt about that.

Q. 99. How did you learn it?

A. Mr. Clark came to our establishment and wanted us to introduce it. I saw the advantage of it and took right hold of it at once. I made the racks and form and laid up a cheese and tested it and tried it up there in Syracuse in our shop; bought apples to do it with.

Q. 100. This is some time in August, you think, 1874?

A. It was in August or September; I can't say which.

Q. 101. At any rate, before that was published?

A. Yes, sir.

Q. 102. Had you seen anybody use that before that time?

A. No, sir; I used it the first time I ever saw it used.

Q. 103. Did Mr. Clark make any of these goods at that time—this device at that time—and sell them?

A. Mr. Clark brought a model to our shop, the first I ever knew of it, and I think it was in August or September, 1874.

Q. 104. Had he sold any at that time?

A. I don't know whether he had or not.

Q. 105. Did he tell you—make any statement of that kind?

A. I don't think he did; I think it was a new invention.

Q. 106. Did he sell any since?

A. Yes.

Q. 107. About what time?

A. At least he claims to have sold a great many.

Q. 108. About that time?

A. During that fall he sold, I think, a great many.

Q. 109. During the fall of 1874?

A. I think so. I know he exhibited to fairs, because I know I met him, and it was exhibited at fairs on our machines; at Western fairs; Michigan.

Q. 110. This particular device—the crib, form, and cloth?

A. Yes.

Q. 111. That was in 1874?

A. Yes, sir.

66 Q. 112. Do you recollect what fair?

A. Fair at Michigan; exhibited it both 1874 and 1875, I think.

Q. 113. He never had any idea at that time of getting any patent on it, did he?

A. I can't tell about that; I know at that time I didn't consider there was any patent on it, and I didn't consider that his old patent covered this new device with the stiff racks, and for that reason I introduced it very generally myself, and introduced it claiming there was no patent on it.

Q. 114. You didn't consider it worth patenting at the time, did you?

A. I considered his patent worth patenting when I saw it patented.

Q. 115. Not before?

A. I would have considered it worth patenting if I had known what claim he could make and sustain.

Q. 116. Before he got the patent you didn't consider it worth patenting?

A. I don't know that I considered at all on it.

Q. 117. You didn't consider it a novelty to have a stiff rack instead of a flexible rack, did you; you didn't think it was patentable on that ground?

A. Stiff racks were in common use at that time.

Q. 118. It wasn't the subject of a patent; stiff racks and forms had been used for a good many years?

A. Forms had been used for a great many years?

Q. 119. That wasn't the subject of a patent?

A. Not alone.

Q. 120. Cloth had been used for straining purposes and for holding soft matter or fluid, or semi-fluid condition for the purpose of pressure?

A. Always had been used for pressing cider; great many years.

Q. 121. How many years before this application?

A. A number of years; I had used them a number of years.

Q. 122. I mean before 1876?

A. Yes, before 1874.

Q. 123. That wasn't any novelty?

A. The use of cloth in pressing cider was no novelty.

Q. 124. Did you consider it a novelty to put all these things together at that time, prior to the time he made his application?

A. I do; yes, sir.

67 Q. 125. I mean at that time.

A. I did at that time consider it a novelty; I considered it a very nice way of pressing cider, superior to anything I had ever seen.

Q. 126. Didn't make any difference in the pressing of the cider?

A. In laying up the cheese, if you choose.

Q. 127. Hadn't people for a long time had a rack and put boards up on each side, and then a cloth inside of that and small piece of stick?

A. They had pressed in cribs, sort of a hoop; they are laid up square and answer the same purpose as a hoop and the whole cheese is pressed down inside of that crib or hoop; racks had been used in that with cloths for a number of years.

Q. 128. A rack extending underneath, extending beyond the hoop itself?

A. I don't think I ever saw anything of that kind.

Q. 129. Can you tell exactly what press you offered to show at the fair in 1873—at the State fair in New York?

A. At Albany, was it?

Q. 130. Yes.

A. I think it was what we at that time called a number two cider press, but I am not certain.

Q. 131. What was the character of that press?

A. It was a knuckle joint work with a horizontal screw.

Q. 132. Form and rack?

A. With crib and rack and cloth.

Q. 133. The form answers the purpose of a crib?

A. It is an entirely different thing.

Q. 134. It holds up the cloth, keeps the pomace in, doesn't it?

A. It holds up the cloth and keeps the pomace in.

Q. 135. Do you know such a paper called the National Press?

A. I do.

Q. 136. Who publishes it?

A. I publish it myself.

Q. 137. Did you publish it in July, 1880?

A. I did.

Q. 138. Who writes the articles for that?

A. I write some of them.

Q. 139. Can you tell by a specific article whether you wrote it or not?

A. I think so.

Q. 140. Did you write the article on Clark's patents?

A. I think I wrote that article.

68 Q. 141. Your attention is called to the article headed "Clark's patents," on page 50 of the National Press, under date of "New York, July, 1880," the paper I offer in evidence, marked "U. S. C. C., N. D. S. N. Y. The Clark Pomace Holder Company agst. William H. Ferguson. Defendant's Exhibit No. 2."

Q. 142. The statement is true as contained in this article, "that the Boomer and Boschert Press Company was one of the first to recognize its merits; in fact they had used or introduced it for two seasons before Clark obtained his last patent, presenting it in connection with their press as an unpatented device?"

A. It is true.

Q. 143. "In this way several hundred presses were sold, which, after the patent was granted, this company paid a royalty on, that their customers might be secured from prosecution, and at the same time at liberty to use the invention in accordance with their representations?"

A. So far as paying a royalty on it, our company cannot be said, perhaps, to have paid a royalty; we settled with Mr. Clark; we didn't pay a specific amount on each press, but had a settlement with him and paid him so much.

Q. 144. You bought the patent?

A. We paid Mr. Clark a certain sum of money to protect our customers against being prosecuted by him.

Q. 145. You didn't buy the patent—didn't pay any money for the patent—is that what you mean?

A. No, sir; we didn't buy the patent.

Q. 146. The Clark Pomace Holder Company didn't buy the patent?

A. The Boomer & Boschert Press Company didn't buy the patent.

Q. 147. The Clark Pomace Holder Company bought the patents?

A. Yes, sir.

Q. 148. Did they pay anything for the patent?

A. The owners of the patent formed a company.

Q. 149. They didn't pay anything to those owners for the patent?

A. They issued stock of the company to the owners of the patent *pro rata*, according to the amount each one owned in the patent.

69 Q. 150. Did the Boomer & Boschert Press Company pay Mr. Clark anything for his patent, or any interest in his patent?

A. No, sir.

Q. 151. Merely took an assignment without any consideration for it?

A. Didn't take any assignment.

Q. 152. George B. Boomer did?

A. Yes, sir; one-fourth interest.

Q. 153. That is yourself?

A. That is myself.

Q. 154. Did you pay anything for your one-fourth interest?

A. Yes; I did.

Q. 155. How much?

A. I don't remember; I bought it of Mr. Hampton.

Q. 156. Didn't you buy any of Mr. Clark?

A. No, sir, I did not; Mr. Hampton bought a half interest of Mr. Clark, and I bought a half of Mr. Hampton's interest.

Q. 157. How much did you pay for it?

A. I don't remember.

Q. 158. Did you pay anything?

A. Yes, sir; I did.

Q. 159. Wasn't it in consideration of your paying for the use of those machines that that assignment was given to you?

A. No, sir.

Q. 160. This purchase you made was for cash, was it?

A. Yes, sir.

Q. 161. Out and out, irrespective of any use that you had had of the machine prior?

A. I went out to Detroit to make a settlement with Clark, and I made the best settlement I could; at the same time I bought half of Mr. Hampton's interest the same trip, I think; I settled for the company, and I also bought half of Mr. Hampton's interest myself on that same trip; went out to Detroit on purpose to accomplish the same object, and finally to accomplish not only the first, but the second.

Q. 162. Do you know whether Hampton ever paid Mr. Clark anything for his half interest?

A. Don't know anything about it; that is, I don't know what he paid him; I think Hampton furnished the money to pay the expense of getting out the patent.

Q. 163. What is the date of the incorporation of the Clark Pomace Holder Company?

A. I don't remember.

70 Q. 164. Was it upon the same day that the acknowledgment was taken by those who signed the certificate October 14, 1878?

A. I can't remember anything about those dates at all.

Q. 165. Do you remember the date it was filed in the secretary of state's office?

A. No, sir.

Q. 166. Do you remember the date it was filed in the clerk's office at Onondaga?

A. Do not.

Q. 167. When was it you took this assignment?

A. I don't remember.

Q. 168. The company hadn't formed at that time, had it?

A. Had not; that is, not at the time I made the bargain.

Q. 169. At the time you took the assignment?

A. No; I think not. I don't remember when I took the assignment; neither do I remember the date of my going to Detroit, when I made the bargains for the company and for myself—that is, for the Boomer & Boschert Press Company.

Q. 170. Were the assignments from Clark, Hampton, and George B. Boomer to the Clark Pomace Holder Company made before the Clark Pomace Holder Company was a corporation or not?

A. Oh, I don't remember; I should presume not.

Q. 171. What year was the Centennial fair?

A. 1876.

Q. 172. Where was the exposition held?

A. Philadelphia.

Q. 173. Was the device covered by this alleged patent, 187,100, of the rack, form, and cloth on exhibition at Philadelphia that year?

A. The application for the patent had been made.

Q. 174. Was that on exhibition?

A. It was; yes, sir.

Q. 175. What time did that exposition open?

A. I don't remember; some time in May, I believe.

Q. 176. What time was it that this rack, form, and cloth was exhibited there?

A. I think we commenced the third day of August; it was about the first of August.

Q. 177. 1876 that you exhibited these three different things in combination at the exhibition at Philadelphia?

A. Yes.

71 Q. 178. That created the necessity of filing an application, did it not, for a patent?

A. I don't know whether it created such a necessity or not.

Q. 179. Don't you know that it did?

A. No.

Q. 180. So many people had seen it and adopted the idea, or were about to adopt the idea?

A. It had been exhibited before that.

Q. 181. Will you look at this certified copy of letters patent and state when the application was really made?

A. This reads "Application filed September 11, 1876."

Q. 182. Then this device of racks, form, and cloth, as claimed in this alleged letters patent, was exhibited *in* the public some time anterior to the alleged application of that letters patent?

A. Yes, sir.

Q. 183. At Philadelphia?

A. Yes, sir.

Stipulated that the signatures of the witnesses to the stenographer's minutes is hereby waived.

Adjourned.

United States Circuit Court, Northern District of New York.

THE CLARK POMACE HOLDER COMPANY

vs.

WILLIAM H. FERGUSON.

Continuation of the testimony for the complainant, taken before James M. Ruso, Esq., examiner, in the city of Albany, N. Y., on the 20th of October, 1881.

Appearances: John Clark, president of the Clark Pomace Holder Company; defendant and his counsel.

GEORGE B. BOOMER recalled.

Examined by Mr. WARD:

Q. 1. Do you wish to make any correction in your last testimony?

72 A. In answer to cross-question 84 I said I remembered receiving the first copy that I saw of the paper at Columbus, during the Ohio fair; I think I was mistaken in regard to receiving the paper at that fair; I saw the first copy some time after I was at that fair.

Cross-examination by Mr. KING:

Q. 2. With whom have you had conversation in relation to this thing since your last examination?

A. Mr. Dunning, of Syracuse.

Q. 3. What is the nature of that conversation?

Plaintiff's counsel objects to any conversation witness has had with Mr. Dunning, of Syracuse, as irrelevant and immaterial.

A. I related, as near as I could, the proceedings when we were here before, and talked with him in regard to this case.

Q. 4. What was the conversation; who is this Mr. Dunning?

A. He is secretary of the Pomace Holder Company.

Q. 5. The complainants in this case?

A. Yes, sir.

Q. 6. Tell us the whole conversation you had.

Plaintiff's counsel objects to any conversation witness has had with anybody, except the parties to the action.

Defendant's counsel stated that Mr. Dunning is one of the parties to the action.

A. I don't think I can give the substance of our conversation entirely.

Q. 7. As near as you can remember.

A. I talked about the date of the issue of that paper with Mr. Dunning.

Q. 8. Using as near as you can, I and you and we—placing yourself in the same position as if you were talking with Mr. Dunning now?

Defendant's counsel requested Mr. Clark, who is to be examined as a witness in this proceeding, to retire to another room during the examination of this witness.

Mr. Clark refused to accede to the request.

73 A. In the conversation it occurred to me that the first fairs, or the first fair that I attended that year, I didn't have the paper to give out.

Q. 9. That isn't the conversation; the question is what did you say to Mr. Dunning and what did Mr. Dunning say to you?

A. And Mr. Dunning suggested that the Ohio State fair was one of the first.

Q. 10. Was that the way he said, "I suggest"—that the words?

A. That is the substance.

Q. 11. Can't you give us the words?

A. I don't think I can the exact words; I knew if it was that I

couldn't have had the paper at that fair and expressed that idea to Mr. Dunning.

Q. 12. In what words did you express it?

A. I don't remember the exact language.

Q. 13. What other conversation with Mr. Dunning?

A. Well, I can't give any particular conversation relating particularly to this business; there were a great many subjects discussed not pertaining to this.

Q. 14. Had any more than one conversation with him relating to this particular thing?

A. I think I have.

Q. 15. When was the first conversation that you have just detailed, and where did it take place?

A. At Syracuse; I think it was the next day after the meeting here; I am not sure about that.

Q. 16. September 17 was the date of the meeting?

A. The next day after the meeting.

Q. 17. When was the next conversation and where did that take place?

A. Last week, in Syracuse.

Q. 18. What was the nature of that conversation?

A. I don't remember whether this matter was referred to at that time or not.

Q. 19. Anything in relation to this case?

A. We had some talk about having Mr. Clark come down from Michigan—sending for him; I believe I advised Mr. Dunning to write for him.

Q. 20. That all?

A. That is all I think of just at present.

Q. 21. When was the State fair in Ohio held that you speak of?

A. During the week commencing September 7; I think the fair opened the 8th.

74 Q. 22. At Columbus, Ohio?

A. I think so; yes.

Q. 23. Only held one week?

A. One week, that is all; five days, I believe, that was; State fairs are generally for five days.

Q. 24. Had you anything on exhibition at that place?

A. Yes.

Q. 25. What was it?

A. A cider press.

Q. 26. Wouldn't you naturally have your circulars there then if you were exhibiting a cider press?

A. That was what the paper was gotten up for, for distributing at fairs.

Q. 27. It was necessary to have a paper of that description at fairs?

A. No, sir; not necessary.

Q. 28. Wasn't there a price-list connected with that paper?

A. Really I can't tell now whether it was or not; we issued trade

circulars aside from that, that we generally sent to our customers, more fully describing the machines.

Q. 29. You are not sure whether you are mistaken in regard to seeing the paper at that fair or not?

A. I am positive.

Q. 30. Did you attend the fair at Columbus?

A. I did.

Q. 31. Was the article written before you went to the fair?

A. I think it was, though I am not certain about that; I sometimes wrote these articles when I was on the road, and at hotels, in the evening, &c.

Q. 32. You don't recollect writing these particular articles while you were on the road?

A. I don't remember writing them at any particular time or place; but I recognize some of the articles as my writing.

Q. 33. Doesn't your books show exactly an express package of these articles sent to the fairs?

A. I have been unable to find any record of that kind.

Q. 34. Who printed this paper for you?

A. I don't know; it is printed in Syracuse; I think it was printed at the Journal office; I know they have done a great deal of printing for us.

75 Q. 35. With whom have you had conversation in relation to this case, other than Mr. Dunning, since you were here?

A. Great many.

Q. 36. Name the people.

A. Mr. Ward, the counsel in this case.

Q. 37. What conversation did you have with him?

Plaintiff's counsel objected to any conversation, on the ground that the communications of a client with his attorney are privileged and confidential communications, and advised the witness not to answer.

A. I have talked with Mr. Ward about this case a good deal. I can't undertake to repeat that conversation.

Q. 38. How is it you come to think over this matter in relation to the time of printing that paper or the time you saw that paper? Why did you lay stress upon an examination of that question?

A. It was very material that I should look over my testimony, which I did after I received a copy, and examine every part of that testimony, and in thinking it over I came to the conclusion that I must be mistaken in regard to that particular part of it.

Q. 39. You say your first conversation was had with Mr. Dunning either the day of the examination here or the next day after?

A. Yes, sir.

Q. 40. The examiner in this particular case takes his notes by stenographic characters, does he not?

A. Yes, sir.

Q. 41. Do you understand phonography or stenography?

A. No.

Q. 42. Can you read his notes?

A. No, sir.

Q. 43. Did the examiner in this case have his testimony written out so you could read it the day of taking the testimony or the next day after?

A. I didn't see it the next day after. I don't know whether he did or not. I didn't see it.

Q. 44. Then you hadn't had an opportunity of reading over your testimony at the time you had your first conversation with Mr. Dunning, had you?

A. I think not.

Q. 45. Then that could not be the reason of your anxiety about this particular point, the reason of your seeking information
76 from him or talking the matter over with him?

A. But I remembered that part of my testimony.

Q. 46. Then the reason that you have just assigned, that you had read over and noticed this thing, was not the correct reason, was it?

A. I am not sure that I came to the conclusion that I was mistaken the day after I gave my testimony, but at some future time perhaps.

Q. 47. You have just stated that there wasn't anything particular said about the subject, except upon the one occasion, have you not, with Mr. Dunning?

A. I think not; that is, I think I have not made such a statement.

Q. 48. Do you recollect of making any other statement?

A. At what time?

Q. 49. Upon this examination to-day; you say you don't remember of having made any such statement as that?

A. I haven't stated that I have had but one conversation with Mr. Dunning since being examined in this case before.

Q. 50. You stated you had one last week about this case?

A. Perhaps you don't understand me.

Q. 51. I think I do; do you desire to correct that now?

A. No, sir.

Q. 52. You did have a conversation with Mr. Dunning last week about this case?

A. Yes, sir; as I before stated, I talked with him about sending for Mr. Clark last week.

Q. 53. Were you not advised by Mr. Ward that this time in relation to the publication of this paper was very material?

A. No, sir.

Q. 54. Wasn't there some conversation had between you and Mr. Ward—some instructions given to you by Mr. Ward in relation to this very subject?

A. No, sir; not any.

Q. 55. This is purely a matter of your own mind?

A. Yes, sir.

Q. 56. No conversation had in relation to the matter at all with him?

A. I told Mr. Ward that I wanted to correct that statement.

77 Q. 57. When did you tell him that?

A. This morning.

Q. 58. When was this other conversation with Mr. Ward?

A. I think we had a conversation after the evidence was given—the same day.

Q. 59. Wasn't suggestion made then to you that you had better look up the question as to the time when you received that paper?

A. I think not; I don't remember.

Q. 60. Do you recollect whether it was or not?

A. I don't remember that it was.

Q. 61. Will you state *it* positively that it was not?

A. No, sir; though I think I should have remembered it if Mr. Ward had made such a suggestion.

Q. 62. Who called it to your mind then?

A. I think it occurred to my own mind.

Q. 63. What do you know about it?

A. The conversation that I had with Mr. Dunning might have had that effect.

Q. 64. What effect?

At this point Mr. Clark left the room.

A. Effect to set me studying upon that subject.

Q. 65. You knew you were obliged, in order to sustain the validity of your patent, to show that this had not been used or known in the market more than two years prior to the date of your application, did you not; it was a vital point to establish?

A. I didn't know that that was a vital point, and I don't know it yet.

Q. 66. Did you not swear on your examination taken on the 17th of September that you knew that to be a fact?

A. I don't think I did.

Q. 67. Were you not asked specifically as to your knowledge of what was requisite in relation to patents?

A. I don't remember being asked such a question.

Q. 68. Have you ever obtained patents yourself for any invention?

A. I have.

Q. 69. How many?

A. I don't remember; quite a number.

78 Q. 70. Have you not been advised by solicitors for patents and by attorneys in patent cases that a patent is worthless where an article has been manufactured and known to have been in use for more than two years prior to the application for the patent?

A. No; on the contrary, I don't think that is true.

Q. 71. Have you not read the patent law?

A. Not much.

Q. 72. Will you swear positively that you have not been so advised?

A. I don't think I have; if I have I have forgotten it.

Q. 73. Have you yourself been an applicant for a patent?

A. I have.

Q. 74. Have you, at the time of the presentation of your application to the Commissioner of Patents, made any affidavit?

A. I made affidavit in making application for patents.

Q. 75. Have you not sworn in those affidavits that the article that you claim to have invented was not known or in use for more than a year prior to the date of your application?

A. I don't think I have; I am not sure.

Q. 76. Do you not know that it is of vital importance in making application to have an affidavit of that description?

A. No, sir; I do not.

Q. 77. Who made these applications for patents for you as a rule?

A. Van Santford & Hauff, of New York, have made some; Smith, of Syracuse. Locee, I think, was the name of the attorney that used to make applications for me.

Q. 78. How many patents have you applied for?

A. I don't remember.

Q. 79. How many do you think?

A. I should think a dozen or fifteen.

Q. 80. How many patent suits have you had or been interested in?

A. One.

Q. 81. Other than this?

A. Yes.

Q. 82. You mean to say, with all the experience that you have had in obtaining letters patent and contesting patents in court, that at the day of the last examination you did not know that a patent was invalid in case the article which was claimed to have been
79 invented had been in public use or on sale or known to the public for more than two years prior to the date of your application; do you mean to swear to that?

A. I mean to swear that I didn't know that it was necessarily a vital point.

Q. 83. Who publishes the National Press, New York city?

A. I do.

Q. 84. Who writes the articles for the National Press?

A. I write some of them.

Q. 85. Did you write this article headed "Important to Cider Makers," in the National Press, page 61, vol. 2, No. 8, issued under the date of August, 1881?

(At this point Mr. Clark returned to the room.)

A. I did.

Q. 86. In this article you claim to know something about patent law, I see; how was it you knew about some parts of patent law and not all of it, as you claim in this article?

A. I don't know how that happened.

Q. 87. If you didn't deem this of sufficient importance, why did you take the trouble to talk with Mr. Dunning and hunt up your statistics as to the publication of that paper?

A. I desired to have my evidence correct, and it readily occurred to my mind that I had made a mistake in this respect.

Defendant's counsel offered the article above mentioned, in the National Press, in evidence.

Marked " U. S. C. C., N. D. S. N. Y. The Clark Pomace Holder Company agst. William H. Ferguson. Defendant's Exhibit No. 3."

Q. 88. Have you had any conversation with any person since this suit was commenced and prior to the taking of the last evidence, of September 18, 1881, in relation to the time of the application for letters patent, and that you were just in time to save yourself on the two years in question?

Plaintiff's counsel objected to the question; the witness must be confined to some particular person if defendant's counsel wishes to contradict his evidence, and cannot hunt up evidence in that way.

A. I don't remember that I have.

80 Q. 89. Did you not state that you were within just two weeks of being too late to file your application?

A. I don't think so.

Q. 90. Do you remember whether you did or not?

A. I don't remember anything of the sort.

Q. 91. Do you remember telling Mr. Ferguson any such thing as that, the defendant in this suit?

A. I do not.

Q. 92. Will you swear positively that you didn't so state to him?

A. Yes, sir; I will.

Q. 93. You will swear positively you didn't so state?

A. Yes.

Q. 94. What did you tell him?

A. I don't remember.

Q. 95. How do you remember you didn't tell him that?

A. Because I know if I had told him so it would have been a fact and I should know it now.

Q. 96. Was it the date for the application of this patent?

A. September 11, 1876, I think.

Q. 97. Why were you so exceedingly anxious, then, to get the time of the receipt of this paper off as late in the month of September as possible if it wasn't to fix up this two-year question?

A. I am only anxious to get my evidence correct.

Q. 98. Did you not say, if you were anxious to get your evidence correct, that you could find out the exact date of the publication of that paper?

A. I don't know that I could; I presume that I could get at it very nearly.

Q. 99. Then, your object has not been to get the correct date of the publication of that paper, upon your own showing?

A. It has not been; my object has only been to make my evidence correct.

Q. 100. If you had an opportunity of finding the exact date, and you didn't avail yourself of that opportunity, what construction do we put upon your conduct in relation to that?

A. You can put any construction you choose upon it; I might

answer that question a little further, perhaps; I simply know as a fact that I didn't receive that paper at the Ohio State fair.

81 Q. 101. You will not swear, though, that that paper was not published before that fair was opened?

A. I don't think it was; on the contrary, I am very confident it was not.

Redirect examination by Mr. WARD:

Q. 102. (Model shown witness.) Is this model, these racks and cloths and guide frame, a correct representation of the patent in question?

Objected to by defendant's counsel. The plaintiff in this case has exhausted his direct examination. This subject should have been taken up and carried out and completed upon his direct examination. It is now incompetent for him, at the close of the cross-examination, to bring in any such proof as this, and therefore objected to as incompetent and improper; it is too late.

Plaintiff's counsel stated that the plaintiff is proving his *prima facie* case, and recalls the witness, Mr. Boomer, to testify.

A. They do clearly represent the combination described in the patent referred to.

Q. 103. (Model shown witness.) Does this apparatus represent the patent, 148,034, referred to in the patent in question and in evidence in this case?

Objected to by defendant's counsel as immaterial. The question is not on the construction of a patent or arising out of the patent. The question is on the patent 187,100, as incompetent, immaterial, and irrelevant.

A. The crib, with racks and cloths, represents Mr. Clark's patent of 1874, the one to which, I suppose, the question refers.

Plaintiff's counsel offered in evidence the model of patent 187,100, marked "U. S. C. C., N. D. S. N. Y. The Clark Pomace Holder Company ag'st William H. Ferguson. Plaintiff's Exhibit No. 9. J. M. R."

Q 104. Did you consider that your answer, that this apparatus included the three stiff racks, two flexible racks, the form, and two cloths?

Defendant's counsel moved to strike out the answer, and
82 objected to it on the ground the model was in before the question was asked; the witness saw exactly what was before him at the time the question was asked, and the question is improper. The question was asked in relation to the platform, fixtures, three rigid racks, a form, and some cloths which were before the witness' eyes at the time the answer was given.

Q. 105. Were the flexible racks also before you, and did you see them at the time the question was asked and answered?

A. I considered the flexible racks a part of the model.

Defendant's counsel moved to strike out the answer, and the question is objected to upon the ground they were not together, but in different parts of the room at the time, and asked the examiner to state that plaintiff's counsel placed upon the table a platform, three rigid racks, a form, and some cloths in one place, and asked the witness the question, is this the model of the patent in question, 187,100, and the flexible racks were entirely separate and in connection with the other, or second model, concerning which the witness is asked.

Plaintiff's counsel asked the examiner to state the flexible racks were close by and in sight of the witness at the time the question was asked.

Defendant's counsel asked the examiner to state that at the time of the asking of the question by plaintiff's counsel he pointed to and had his hand upon the platform, three rigid racks, form, and cloths.

The WITNESS: In my answer to Mr. Ward's question, 102, I considered the flexible racks as part of the model.

Defendant's counsel moved to strike out the answer as improper and not responsive to the question.

Plaintiff's counsel offered the model of patent 187,100, consisting of the guide frame, two flexible racks, three stiff racks, two cloths, supported upon a small model of a press, bed, and platform, in evidence.

Defendant's counsel objected to it, upon the ground of its all being in evidence once, except the flexible racks, therefore improper to be in evidence a second time.

83 Plaintiff's counsel withdrew the first offer of model in evidence.

Defendant's counsel objected, and stated he already intimated before putting the model in the second time that it was proper and competent for him to withdraw at that time, but inasmuch as he would not act upon such suggestion, but still adhered to his proposition to put the model in the second time, and he having withdrawn after the model has been put in a second time, it is now too late. Marked "U. S. C. C., N. D. S. N. Y. The Clark Pomace Holder Company ag'st William H. Ferguson. Plaintiff's Ex. No. 9. J. M. R."

Plaintiff's counsel offered in evidence the model of patent 148,034, consisting of three flexible racks, four cloths, and a crib.

Objected to by defendant's counsel as immaterial, incompetent, and irrelevant.

Marked "U. S. C. C., N. D. S. N. Y. The Clark Pomace Holder Company ag'st William H. Ferguson. Plaintiff's Exhibit No. 10. J. M. R."

Q. 106. You heard the testimony of Goodfellow and Pemberton on the last examination, and from their testimony understand the apparatus used by defendant Ferguson between the date of the patent and the commencement of this action?

Objected to by defendant's counsel upon the ground this should have come out on the direct examination of Mr. Boomer, and it is too late to prove that now by this witness.

A. I heard the testimony.

Q. 107. Have you since read their testimony?

A. I don't think I have.

Q. 108. Is the apparatus which they testify to as being used by Ferguson correctly represented by the model of patent 187,100, already introduced in evidence?

Objected to by defendant's counsel as leading and incompetent.

A. It is.

84 Q. 109. Did you, or the Boomer & Boschert Press Company, to your knowledge, ever use or sell, with Clark's consent, the apparatus patented by him prior to September 11, 1874?

Objected to, on the ground this should all have been developed before.

A. I don't think we did.

Recross-examination by Mr. KING:

Q. 110. You say this is a correct representation of the combination included in patent 187,100—this model here upon which I hold my hand, consisting of a platform, fixtures, three rigid racks, two flexible racks, a form, and cloths?

A. Yes, sir; I consider that a correct representation.

Q. 111. And they are to be used in the way in which they are now placed upon the table, excepting the pomace should be placed in the cloths?

A. Yes, sir.

Q. 112. Did you hear the witnesses that have just been named to you, Goodfellow and Pemberton, swear that Ferguson had used any such device as this before?

A. Not in that exact language.

Q. 113. In answer to the question just propounded to you by counsel for the complainant, why did you state that Ferguson did use the combination in this way?

Objected to by plaintiff's counsel as leading and calling for a conclusion.

A. I stated that this was a correct representation.

Q. 114. The question is, why did you state so?

Objected to by plaintiff's counsel as assuming.

A. Because those gentlemen described a combination used by Mr. Ferguson as a a similar set of racks, forms, and cloths to the set shown in this model.

Q. 115. You never have seen the device used by Mr. Ferguson, have you?

A. I think I have not.

Q. 116. Do you know whether you have or not?

A. Really, I can't say.

Q. 117. You don't think you have?

A. I don't think I have.

Q. 118. All the knowledge in relation to the use of any
85 device by Mr. Ferguson has been gathered from an impression which your mind received from hearing the testimony of these two witnesses, Goodfellow and Pemberton? Is that a fact?

A. Yes, sir; it is practically true.

Q. 119. Then you heard these witnesses swear that Ferguson was using a rack which turned up on the sides, did you not, and that he didn't use a form?

A. I heard them swear he was using such a rack at this time.

Q. 120. Is that anything like the device here before you—this model?

A. Very similar.

Q. 121. In what respect is it similar? There is a form here, is there not?

A. There is a form.

Q. 122. If he doesn't use a form, then it isn't similar, is it?

A. He does use a form.

Q. 123. In answer to the question just asked you you have disdinctly stated that you heard the witnesses state he did not use a form. Now the question is asked you if he doesn't use a form; whether this represents the device he is using. What is your answer to that question?

A. The counsel, I think, is mistaken in regard to my statement.

Objected to by plaintiff's counsel as calling for a conclusion of the witness and as leading.

The WITNESS: You muddle me up so in your cross-fire I don't get hold of it. I didn't make any such statement.

Objected to further — it assumes to be a fact which is not true.

The WITNESS: I didn't intend to make such a statement.

Q. 124. Is that your answer to the question—you didn't intend to make such a statement?

A. Yes, sir.

Q. 125. Were any of these devices of which models are here present at the Albany fair in 1873?

A. I think so.

Q. 126. Which?

A. I think the crib.

Q. 127. Do you know?

A. I do not, positively.

Q. 128. The other may have been?

A. To what other do you refer?

86 Q. 129. This (Plaintiff's Exhibit No. 9).

A. I wasn't at that fair myself; I know we were not manufacturing the system referred to at that time.

Q. 130. Look at the paper which I will now hand you, called the Boomer & Boschert Press, dated Syracuse, N. Y., September, 1874, marked Defendant's Exhibit No. 1, upon the upper part of the right-

hand column of the first page, and tell whether that is a rigid or a flexible rack.

A. That represents a rigid rack; what we call a stiff rack.

Q. 131. This rack follows or is comprised in the article which has been heretofore testified by you to have been written by yourself under the head of "Laying up the Cheese," is it not?

Objected to by plaintiff's counsel on the ground witness did not testify he wrote that article himself.

A. That rack is described in the same article.

Q. 132. The representation in this same paper called the log-house crib, upon the latter portion of the third column of the first page, is supposed to represent this second model, is it not?

A. Well, no; it is similar in construction, but not supposed to represent.

Q. 133. It was intended at that time, was it not, to so represent?

A. No; it was not intended to represent Mr. Clark's construction of the crib; it was a crib that was in common use among cider makers at that time.

Q. 134. Were flexible or rigid racks used with this crib patent? What does that patent call for, flexible or rigid racks?

A. I think Mr. Clark's first patent called for flexible racks; I think that was one of the points of his invention.

Q. 135. Who made these models?

A. I don't know who made them; I had them made myself; at least I ordered them; they were made in Syracuse in our shop.

Q. 136. How do you press lard—in what manner?

A. There are various methods, according to the object in view.

Q. 137. Do you use a form or rack?

A. No; I think not.

Q. 138. Do you know?

A. I do not.

87 Q. 139. Do people usually? You might as well tell us the whole thing as well as to go fiddling around wasting time; we can prove it all.

A. Use racks and forms.

Q. 140. Yes?

A. I don't know of anybody that does.

Q. 141. Tell me what cider mill that was that in 1873 at the New York State fair, held at Albany, under No. 1495, exhibited by Boomer & Boschert, Syracuse, A. L. Tallmadge, exhibitor—what that cider mill was?

A. That was a No. 2 cider press that Boomer & Boschert make.

Q. 142. What were used in connection with it?

A. Grater for grating apples. Do you want me to go on and describe the rack and pomace holder?

Q. 143. Yes.

A. I don't know that I can do that; I will try, however; I think there is a crib and racks and cloths used in connection with it.

Q. 144. You don't know positively?

A. I don't know positively.

Recess.

Afternoon session.

GEORGE B. BOOMER recalled.

Cross-examination continued:

Q. 145. (Model of rack shown witness.) Please look at that and state what it is.

A. That appears to be a rack.

Q. 146. What is it?

A. I should judge it was made to represent the rack described as being used by Mr. Ferguson at our last session.

Q. 147. What is this thing? That is three times I have had to ask that question.

A. That appears to be a model of a rack.

Q. 148. I ask you the fourth time, what is this?

A. I don't think I have made any mistake about it; I think it is the model of the rack described here at our previous meeting.

Q. 149. I am not asking for a thing described at any particular place; I am asking the purely simple question, what is this—
88 not what it appears to be, but what is this?

A. Sticks of wood, hinges, screw, and nails put together in the shape of a rack, evidently to represent a rack for making cider.

Plaintiff's counsel moved to strike out "for making cider."

Q. 150. How do you know this is to make cider?

A. I don't know that it is used to make cider.

Q. 151. How do you know for what purpose it is used?

A. I don't positively know for what purpose it is used.

Q. 152. Is that rack anything like your rack there, either the flexible or the rigid racks?

A. Something like it.

Q. 153. In what particulars?

A. It is put together in the same way, with the exception of these hinges.

Q. 154. Does this line, this piece of wood underneath, which binds several racks together, extend from the first rack laid on top to the last rack laid on top—in other words, completely across?

A. Yes, sir.

Q. 155. Is that joined on to this and this piece joined on to that?

A. Yes, sir.

Q. 156. How do you join it?

A. Join it with that hinge.

Q. 157. That is separate entirely? Isn't that composed of three separate, distinct pieces?

A. Yes, sir.

Q. 158. Then they are not joined together?

A. Joined together with that hinge.

Q. 159. How can they be joined together with a hinge?

A. With screws.

Q. 160. With hinges and screws? Is that one continuous piece of wood?

A. It has been cut off in these two places.

Q. 161. Is that one continuous piece of wood?

A. It is, perhaps, three pieces of wood joined together with a hinge.

Q. 162. Are there any hinges on that piece of wood?

A. Not on the middle piece.

Q. 163. Is there any hinge on either of the pieces underneath the bottom of these five pieces—any hinges there of any kind?

A. Yes, sir; there are hinges there.

89 Q. 104. Do you see any hinges there?

A. Yes, sir.

Q. 165. Where?

A. On the under side of the rack.

Q. 166. We are talking about these five pieces of wood that join the slats together; do you find any hinges on any of those?

A. The hinges are not laid directly on those sticks.

Q. 167. You just answer the questions asked.

A. But joining those sticks together through the rack sticks.

Q. 168. The question is, are there any hinges joining here or any of these joints on these slats?

A. Certainly.

Q. 169. You see it?

A. I see hinges on that joining the racks—the rack sticks.

Q. 170. The racks in this model are composed of continuous pieces of wood, are they not, without any breaks; without any cutting; without any joints?

A. You mean the sticks that tie the racks sticks together?

Q. 171. Yes.

A. Yes, sir; they are continuous.

Q. 172. These are not continuous, are they?

A. They are not in one piece.

Q. 173. You see, you have got an answer now that has taken some time to get. Is there any other similarity, in your opinion, between this and your racks? And point out that rack which you claim is similar, whether rigid or flexible.

Plaintiff's counsel objected to any further questioning on the model, and moved to strike it out until it is offered in evidence.

A. I don't know as I understand your question fully.

Q. 174. (The stenographer read the question.)

A. Other than what?

Q. 175. Other than you have already stated, of course.

A. I have stated it was similar to our rack—similar to the rack described in this model; I don't know that I specified any one particular similarity.

Q. 176. I thought you were trying to get at something similar—trying to explain something similar.

A. I haven't tried that I know of.

Q. 177. What did you try to do?

A. Tried to answer your question.

90 Q. 178. Just answer it all over again, commencing at the beginning.

A. I say, as I said before, that this rack is similar to ours.

Q. 179. Designate the similarity.

A. Similar to the rack in this model.

Q. 180. Which rack in the model?

A. The stiff rack.

Q. 181. The rigid racks?

A. Yes, sir; the rigid racks.

Q. 182. State wherein they are similar; we will go all over the ground again.

A. They are made in the same way, with the exception of the hinges and these broken places; if these hinges were taken off we should still have the similar racks to our racks in the middle of that; if they are put on and you enlarge the rack it still remains a rack similar in construction to our racks.

Q. 183. The only similarity between this rack and your rigid rack the center part of this rack is similar to yours; is that it?

A. No, sir; when the rack is spread out it is similar to our racks.

Q. 184. You have stated yours were composed of pieces continuously made, at least one continuous piece bound together by crossties, as you call them, running from one side to the other, completely across without any break—any cut of any kind?

A. That is right.

Q. 185. Do you mean to say that that thing there is formed in the same way?

A. No, sir.

Q. 186. Then state exactly how it is formed?

A. The difference is putting the hinges on here and cutting those sticks off, connecting it together by hinges instead of by continuous rack sticks.

Q. 187. It isn't anything like your rigid rack?

A. Very much like it; that is the only difference.

Q. 188. That is the only thing, isn't it; isn't it the vital difference?

A. If there is any vitality about it I should say it was.

Q. 189. Now, when these are turned up what does it form?

A. It forms a form, I should judge, for forming cheese on the rack.

Q. 190. Is that form made in the same shape your form is, or the form in that model appertaining to patent 187,100?

A. It is not exactly the same.

91 Q. 191. Is it anything like it?

A. Oh, yes, very much like it.

Q. 192. State in what particulars.

A. It is square and made of similar height, and when put together in that way it is made to answer the same purpose.

Q. 193. That isn't the question; what it was made to answer for; strike that out; this might be made for a hold in a ship, a hatchway in a ship, a form identically like this; would it necessarily follow that this was made for a hatchway of a ship?

A. No, I should think not.

Q. 194. Are the four corners joined together in this model now before you?

A. They would have to be for use.

Q. 195. Are they nailed, the one to the other, in any of the four corners?

A. They are not.

Q. 196. Are they made of one strip of board similar to your model?

A. They are made of several pieces.

Q. 197. Having interstices between each piece?

A. Yes, sir.

Q. 198. Two sides are longer than the two other sides, are they not?

A. They are.

Q. 199. And can be readily let down upon all four sides?

A. Yes, sir.

Q. 200. When they are turned up they do not extend, at least the center rack does not extend underneath either or any or all of the sides which are turned up?

A. Does not.

Q. 201. Your model is composed of four pieces of wood joined together by nails, or otherwise, screws at the ends fixed rigidly?

A. The model of the form do you refer to?

Q. 202. Yes.

A. There are four sticks joined together, nailed together, or screwed together.

Q. 203. And must be used together; cannot be used separately; must be used together and kept permanently together in order to be useful?

A. Not necessarily.

Q. 204. Of what use are they without they are nailed together?

A. They are not adapted to the use for which they are designed unless they are fastened together.

92 Q. 205. The form of the model relating to patent 187,100 must rest upon racks, must they not, in order to be of any use, according to this patent?

A. That is the way it is designed.

Marked "U. S. C. C., N. D. S. N. Y. The Clark Pomace Holder Company ag'st William H. Ferguson. Exhibit No. 4, for identification. J. M. R."

Q. 206. The center piece of this marked for identification is smaller than your rack, is it not?

A. I should think it was the same size, about.

Q. 207. I mean that this center piece is smaller than it would be if it extended beyond the form, if a form rested on it?

A. No, sir; resting a form on it I wouldn't say would change the size of it at all.

Q. 208. Resting this particular form on it?

A. No, sir; I don't see as it changes the size of the center piece.

Q. 209. The four outside pieces are larger than this and could

pass down beyond and rest upon something below this rack if these hinges were off?

A. If the hinges were not attached to it you could pass it through the form.

Q. 210. In the Clark patent there is a claim made that the rack must necessarily be larger than the form itself; is it not so?

Plaintiff's counsel objected to the question on the ground — the patent itself is the best evidence and as calling for a conclusion.

A. I don't think that that is in the claim of the patent.

Q. 211. In your opinion, if anybody who uses a form and rack where the rack does not extend beyond the form they wouldn't infringe?

A. Well, I could give a more intelligent answer to that question if there was a specific illustration.

Q. 212. You have been illustrating this all for the last four or five years manufacturing; you ought to know what is in the contents of this patent.

A. If you wish to know my opinion of this particular rack——

Q. 213. I am not speaking about this particular rack at all.

A. I should say this was an evasion of the Clark——

93 Q. 214. Didn't infringe on the Clark patent?

A. I should think it was meant for evading the Clark patent; designed for that purpose.

Q. 215. This thing wouldn't infringe the Clark patent?

A. I think it would infringe the Clark patent.

Q. 216. How could it infringe when it evades?

A. It is designed for an evasion, I should think, but I don't think it is different enough from the Clark patent to constitute anything but an infringement.

Q. 217. We will go back to the first question. Is it not a vital element in the Clark patent that the rack must extend beyond the form?

A. In pressing the cheese I would say it was a vital element that the rack should extend beyond the size of the cheese.

Q. 218. Isn't it a vital element no matter whether the cheese is pressed or any other thing is pressed?

A. Yes.

Q. 219. One of the vital elements is the extension of the rack underneath the form itself?

A. Well, I should think not necessarily.

Q. 220. How is it you say in one breath it is and another breath it is not?

A. I don't say that.

Q. 221. What do you say? This is the third chance.

A. I say that when the cheese is laid up the cloth should be within the limits of the racks.

Q. 222. Then, I am to understand this—this is your third attempt; let us have it right; if we should take one of those racks and place this form entirely outside of this rack, so that the whole

rack would come inside, then the party using it this way would not infringe the Clark patent, is that it?

A. No; I don't think he would infringe the Clark patent if he used the form extending over the rack and didn't take any means to extend that rack beyond the cheese.

Q. 223. No matter whether he used form, rack, and cloths or not?

A. I don't get the bearing of your question, if you mean that for a question.

Q. 224. I mean that as a question, as a matter of course.

A. Using form, cloth, and rack, of course, is necessary in laying up a cheese by this system.

94 Q. 225. You make the remark, I don't know much about this case. You have been five years working at it, and you ought to understand the question.

A. If you will put your question in plain language——

Q. 226. They are just as plain as English words can make them; whether you purposely do not want to understand them or whether you do not understand them isn't my fault.

Plaintiff's counsel insists there isn't any meaning to the question.

Q. 227. (The stenographer read the question.)

A. I think it would make no difference.

Q. 228. This form and model of complainant relating to patent 187,100 has a guiding place, has it not?

A. Not always.

Q. 229. This model has a guiding place?

A. This particular model is illustrated in that way.

Q. 230. Then it always has, hasn't it?

A. Oh, no.

Q. 231. This always has?

A. If this remains as it is now it would always have a guiding place, of course.

Q. 232. In using your apparatus in laying up a cheese with that device under patent 187,100 you are compelled to move the form every time you put on a new rack, are you not?

[A]. Yes, sir.

Q. 233. In this particular form of rack and form you don't remove the form every time you lay up a cheese or lay up a rack?

A. Yes, sir.

Q. 234. How do you do it?

A. You transform the form into a part of the rack.

Q. 235. A transformation is a removal, is it?

A. Amounts to the same thing in this case.

Q. 236. Because you want to; that your only reason?

A. Because it is an actual fact.

Q. 237. That the dropping of sides is a removal?

A. It is removed from the place where it was and made to perform a new function.

Q. 238. Is it removed in the same manner as the form in the model 187,100 patent is removed?

A. No; it is not.

95 Q. 239. It isn't taken from one place and placed in another, is it; now, these things have all got to go before a court, and you don't want to appear, in order to get your case through, totally ignorant of mechanics or anything like that?

A. Yes; it is taken from one place and put in another; it is taken from the sides of the cheese and placed so that it will come under it when the cheese is pressed.

Q. 240. You mean to swear then that the four sides which make up a form used with this identical rack is taken up bodily, all joined together, and placed either on another rack on top of it or in some other part of the factory?

A. No, sir; I don't mean to swear to anything of the sort.

Q. 241. What is the manner of removal of the form represented by this model of patent 187,100?

A. It is usually taken up bodily and placed——

Q. 242. The four sides together?

A. All together; yes, sir.

Q. 243. You can't remove the four sides of this particular rack without moving the rack with it, can you?

A. You can't separate the form from the rack in that case.

Q. 244. Your supposition—at least, your statement on the direct examination in relation to the use by the defendant in this case of any particular device is merely an impression that you got from hearing these witnesses testify; is that a fact?

A. My testimony was founded upon the evidence given by them.

Q. 245. You don't know, or have no means of knowing, whether their statements were true or not, have you?

A. Why, no further than the statement of Mr. Ferguson and Mr. Ward and other gentlemen that have been in Mr. Ferguson's mills.

Q. 246. You haven't seen anything of your own knowledge; all you know is hearsay?

A. Hearsay and testimony.

Q. 247. You have based your calculation entirely on the statement they make?

A. Yes, sir.

96 Q. 248. If their statement is incorrect, why, your testimony in this respect is of no account; is that a fact?

A. I should suppose it would be of no account.

Redirect examination by Mr. WARD:

Q. 249. You heard Goodfellow's testimony as to the manner in which Mr. Ferguson is now making cider, laying up the cheese, on the former examination?

A. Relating to the new rack?

Q. 250. Yes.

A. Yes, sir; I heard it.

Q. 251. Does this rack (Defendant's Ex. No. 4, for identification) correctly represent the apparatus testified to as being used by Mr. Ferguson at the present time?

A. I really can't distinguish between the testimony of the two gentlemen who testified in the case.

Q. 252. The one who testified concerning this new rack.

A. That illustrates the rack, according to the description that the gentleman gave.

Q. 253. Would this rack, the way they testified to its being used, perform the same functions in the same manner as the patent 187,100?

A. I think it would.

Plaintiff's counsel offered the rack in evidence. Marked "U. S. C. C., N. D. S. N. Y. The Clark Pomace Holder Company ag'st William H. Ferguson. Plaintiff's Exhibit No. 11. J. M. R."

JOHN CLARK sworn for plaintiff:

Examined by Mr. WARD:

Q. 1. You are a citizen of the United States?

A. Yes, sir.

Q. 2. Where do you reside?

A. Pontiac, Mich.

Q. 3. Are you the patentee mentioned in patent 187,100?

A. Yes, sir.

Q. 4. Did you ever, in any way, shape, or manner, sell, or permit others to sell, or put this patented improvement mentioned in patent 187,100 into public use, or permit or authorize others to put into public use, before September 11, 1874?

A. I did not.

97 Cross-examination by Mr. KING:

Q. 5. Where were you born?

A. Livonia, Livingston county, N. Y.

Q. 6. How old are you?

A. 41.

Q. 7. What is your business now?

A. My business now is manager of a machine shop.

Q. 8. Are you in the Clark Pomace Holder Company?

A. Yes.

Q. 9. Hold any office in that?

A. President of the company.

Q. 10. How long have you known Mr. Boomer?

A. Seven years, more or less.

Q. 11. What time was it you got acquainted with him?

A. Seven years ago.

Q. 12. What time was it?

A. I am not certain of the time of year.

Q. 13. Winter or spring?

A. I think in the spring of 1874—no, not the spring. I know it wasn't in the spring—yes; I will correct that. I think it was in June, 1874.

Q. 14. Where did you get acquainted with him?

A. I think in Syracuse, June, 1874.

Q. 15. What did you see him about?

A. In reference to the pomace holder—that one (Exhibit No. 10).

Q. 16. Did you speak to him anything about this other matter—these other patents represented by model No. 9, patented invention 187,100?

A. Can't say that that was mentioned.

Q. 17. Did you see him often at that time?

A. No, sir; one day.

Q. 18. That is all?

A. I think so.

Q. 19. When is the next time you saw him?

A. At Saginaw, Mich.

Q. 20. About what time?

A. Well, I think it was the week of the 15th or the 22d of September.

Q. 21. What year?

A. 1874.

Q. 22. What did you see him about or what did he see you about?

98 A. Why, he met me at Saginaw; came there from Cincinnati, as I understood it, one of those two weeks—in the 15th or 22d of September.

Q. 23. What did you have conversation about then; do you recollect?

A. We had several conversations; some relative to the pomace holders and some to the presses and some to the circular they had issued.

Q. 24. What sort of circular was it?

A. It is exhibited here, I believe.

Q. 25. This sort of circular (Defendant's Exhibit No. 1), in relation to that circular?

A. I think this is the circular I speak of.

Q. 26. In relation to the circular marked Defendant's Exhibit No. 1; is that so?

A. Yes.

Q. 27. What was the nature of that conversation; do you remember?

A. Yes, sir.

Q. 28. What was it?

A. The nature of a little war.

Q. 29. What sort of a war?

A. It was contrary to my wishes and desires.

Q. 30. What was?

A. The issuing of the circular containing the parts that it did.

Q 31. In respect to what—in respect to this apparatus?

A. No; I will tell you in a minute. To an article on the front page of this paper headed "Laying up the Cheese" (the article in evidence).

Q. 32. What objection had you to that?

A. To that particular one?

Q. 33. Yes.

A. The part of said paragraph where the word "rack system" commences.

Q. 34. Ending where?

A. From there down.

Q. 35. To the end of the paragraph?

A. Yes; the whole article.

Q. 36. When did you get that paper; when did you see that paper?

A. It arrived there on a Tuesday of one of those weeks.

Q. 37. Prior to Mr. Boomer's coming to see you?

A. He was there on Tuesday—the same day.

Q. 38. You got it the same day he came?

A. Yes, sir.

Q. 39. Did he bring it with him?

A. He had one copy with him.

99 Q. 40. Is this a copy?

A. No, I think not.

Q. 41. Did he say he had written the article?

A. I can't remember as regards to that.

Q. 42. Why did you find any fault with the article?

A. Because it was a blunder.

Q. 43. How did he find out about this system?

A. Of laying up the cheese?

Q. 144. Yes; by the combination claimed in patent 187,100.

A. I took the model to him in June, the date I speak of.

Q. 45. In June, 1874, you mean?

A. Yes.

Q. 46. And show it to him and explain it to him?

A. Yes.

Q. 47. The whole combination?

A. Showed whatever there was of it.

Q. 48. Then I suppose from that he wrote this article, did he not?

A. I don't know who wrote it or what incited them, or anything about it.

Q. 49. Did you use any of those devices yourself before September, 1874?

A. Not before the State fair at Michigan.

Q. 50. When was the State fair at Michigan?

A. You mean used them in practical use?

Q. 51. Yes.

A. I am undecided; I don't know; it was one of those two weeks; twenty-sixth annual fair.

Q. 52. What time of year was this fair?

A. In September.

Q. 53. What time did it commence?

A. That is something I can't say.

Q. 54. Whereabouts was the fair held?

A. East Saginaw, Mich.

Q. 55. Now called West Bay City?

A. No, sir; East Saginaw, South Saginaw, Saginaw, and Bay City.

Q. 56. Were you manufacturing these cribs, cider presses, at that time, 1874?

A. The manufacture was commenced after the fair.

Q. 57. Fair of 1874?

A. Yes, sir.

Q. 58. Didn't you use any of these devices yourself?

A. Not before that time; not for pressing cider.

100 Q. 59. In June, 1874, during this conversation you had with Mr. Boomer, did he make any objection to the style in which it was manufactured?

A. He didn't favor the flexible rack.

Q. 60. What did he favor? What did he suggest to you?

A. He favored a stiff rack.

Q. 61. Any other suggestion?

A. Favored the stiff rack; I didn't say he suggested it; that was about all I remember.

Q. 62. You took which style of rack to him—stiff rack or flexible rack?

A. Flexible rack.

Q. 63. Mr. Boomer made some of those after you saw him, didn't he?

A. I couldn't say.

Q. 64. Didn't he afterwards tell you that he did?

A. No, sir.

Q. 65. Didn't you ask him for some royalty for some that he had made?

A. No, sir.

Q. 66. Never made any demand of that description?

A. No, sir.

Q. 67. You exhibited this at the Centennial fair, did you not?

A. No, sir.

Q. 68. Who did?

A. I don't know.

Q. 69. Do you know whether it was exhibited there or not in 1876?

A. No, sir.

Q. 70. Don't you know Boomer & Boschert exhibited it there?

A. No, sir.

Q. 71. How did you come to get out a patent for this thing?

A. Because I was entitled to it by invention.

Q. 72. What induced you to get one out?

A. Well, the value of it, I suppose, or supposed value to cider makers.

Q. 73. Didn't Boomer tell you in June, 1874, or thereabouts, that the invention was not worth patenting?

A. Well, I don't know what you mean by that.

Q. 74. That, in his opinion, the invention was not worth patenting.

Plaintiff's counsel objected to what Boomer told witness in relation to getting this thing patented as irrelevant and immaterial.

101 A. Mr. Boomer told me that the flexible racks were not worth anything; I don't know whether he said patenting or not. Further than that I couldn't say.

Q. 75. Did he state that he thought the bag system was the best?

A. We had general conversation, and the bag system was brought up. Whether he said he thought that was the best or not I can't say.

Q. 76. Didn't he urge the bag system strongly?

A. I can't say. It was nothing to me. I couldn't say as to that, strongly; he might have talked it.

Q. 77. If this system, pretended to be invented by you, claimed under letters patent 187,100, was on exhibition in 1876 at Philadelphia, the Centennial fair, it was exhibited without your permission or consent, or without your knowledge? Is that so?

A. Certainly, it was.

Q. 78. Did you take any of these racks, cloths, or forms to operate in combination prior to September 11, 1876?

A. Not for practical use.

PLAINTIFF'S COUNSEL: What date was that?

DEFENDANT'S COUNSEL: September 11, 1876.

The WITNESS: Oh, 1876. That was a mistake. I didn't understand. That question has been asked once and I have answered to the contrary.

Q. 79. I don't understand you have been asked that question yet?

A. Yes, sir.

Q. 80. Well, what is your answer now—prior to September 11, 1876?

A. Why, certainly.

Q. 81. (PLAINTIFF'S COUNSEL.) That was the date of the application of your patent?

A. I am wrong; I have answered that question once before, that I made them after the State fair at Saginaw.

Q. 82. After September, 1874?

A. After the State fair at Saginaw, 1874; that was the first.

Q. 83. You made them continuously up to when—made and sold them, do you mean?

A. Made and sold them until the Pomace Holder Company was formed at Syracuse.

Q. 84. What time was that?

PLAINTIFF'S COUNSEL: October, 1878.

102 Q. 85. From September, 1874, to October, 1878, you made and sold them yourself, — this combination of rack, form and cloth?

PLAINTIFF'S COUNSEL: I want you to put down some time in September.

Q. 86. From September, 1874; that is true, from September, 1874, down to some time in October, 1878, you made and sold this combination of rack, form and cloth yourself?

A. After September 15, 1874, I did.

Q. 87. But you knew of this invention prior to September 15, 1874, because you had communicated with Mr. Boomer in relation to the article itself?

A. I had talked with Mr. Boomer about it.

Q. 88. You knew of people using flexible racks prior to June, 1874, did you not?

A. Used them in 1873.

Q. 89. Who used them in 1873?

A. Matthews & Clark, Pontiac, Mich.

Q. 90. Didn't Mr. Boomer?

A. I don't know.

Q. 91. What was the business of the firm of Boomer & Boschert in the months of June, July, August, and September, 1874?

A. Manufacturers of cider presses.

Q. 92. They were continually manufacturing cribs—at least racks?

A. I guess not; not that I know of.

Q. 93. Didn't they manufacture this crib for you?

A. Of which patent?

Q. 94. That one. (Exhibit No. 10).

A. I don't know as they ever made one of those cribs.

Q. 95. What did they pay you once some money for?

A. They never paid me any money for anything of this description.

Q. 96. Neither for the patent or royalty?

A. Boomer & Boschert Press Company?

Q. 97. Yes.

A. Not on that crib.

Q. 98. How many of this combination under letters patent 187,100, between September, 1874, and September 11, 1876?

A. What date [in] September, 1874?

Q. 99. Any date; September 15, if you like.

A. I couldn't say now.

103 Q. 100. How many should you think?

A. I remember of two.

Q. 101. No more?

A. It has escaped my memory; I don't know how many.

Q. 102. Two dozen?

A. I should say a dozen, perhaps.

Q. 103. Racks had been made for some time prior to this for use in cider presses?

A. Yes, sir.

Q. 104. So had forms, had they not?

A. Yes.

Q. 105. Cloth was used for a long time and prior to the application for a patent or your alleged invention for straining purposes and to hold pomace?

A. Oh, yes.

Q. 106. How long prior had these three articles been in use, do you think?

A. About fifty years I should think; perhaps some of them, according to history, or the Cider Makers' Manual.

Q. 107. What does the Cider Makers' Manual state?

A. It states to that effect, I guess.

Q. 108. That the cloths, racks, and forms had been in use for fifty years?

A. There was a patented rack exhibited in the Cider Makers' Manual.

Q. 109. Similar to that rack?

A. Why, yes; perform the same function as my rack.

Q. 110. Made in about the same way?

A. Cross-pieces; made the same way; the stiff rack I have reference to.

Redirect examination by Mr. WARD:

Q. 111. How much did you use this patented improvement (Exhibit No. 9) in 1873?

A. Not any only as an experiment.

Q. 112. Only to try and see how it worked?

A. Yes, sir.

Recross examination by Mr. KING:

Q. 113. What time in 1873 did you first start this thing?

A. November.

Q. 114. That was the first time you commenced to use the rack, form, and cloths?

A. Experiment; the first time I experimented with it.

104 Q. 115. The first time you put the three together and tried to make cider with them?

A. I won't say that; I know in November I got them together; I am not positive about it.

Q. 116. November, 1873?

A. Yes, sir.

Q. 117. Know of anybody else doing it there?

A. No, sir.

Q. 118. Around your neighborhood?

A. No, sir.

Q. 119. Or anywhere else?

A. No, sir.

Q. 120. I mean November, 1873?

A. Up to what time?

Q. 121. Any time.

A. They have used them since 1873 there.

Q. 122. Who were they?

A. Wickes & Donaldson, of Commerce.

Q. 123. How many presses did they use, or racks, forms, and cloths?

A. I think they had two presses.

Q. 124. When did they commence to use those?

A. I couldn't say.

Q. 125. Latter part of 1873?

A. Who?

Q. 126. Wickes.
A. No, sir.
Q. 127. What time?
A. I think they commenced to use them in 1875.
Q. 128. Similar to this?
A. The same, with flexible rack.
Q. 129. The same as the invention described in the patent 187,100, excepting they had flexible racks instead of rigid racks; that is what you mean?
A. Yes, sir.
Q. 130. They commenced in 1875?
A. I won't say whether they got into it in 1874 or not; I know they used the crib until after my public exhibition.
Q. 131. What time was your public exhibition?
A. At Saginaw State fair.
Q. 132. September, 1874?
A. Twenty-sixth annual fair.
Q. 133. You publicly exhibited this invention at the twenty-sixth annual fair at Saginaw in 1874?
A. Yes, sir.
Q. 134. They used it after that?
A. Yes, sir.
105 Q. 135. Do you know of anybody using it between November, 1873, and September 15, 1874?
A. Do not.
Q. 136. Other than yourself?
A. Nobody used the invention patented by this exhibit (No. 9) to my knowledge.
Q. 137. Between November, 1873, and September 15, 1874?
A. No.
Q. 138. Did you let other people use them—try them?
A. Not under this exhibit (No. 9).
Q. 139. Who else manufactured or used those devices prior to September 11, 1876, besides Wickes and somebody else?

Plaintiff's counsel objected; there are thousands of them using it.

A. I don't know whether I have got the books or not to show.
Q. 140. Who used it without your consent?
A. That I don't know.
Q. 141. Don't remember of any except this Wickes firm?
A. They used them with my consent.
Q. 142. You don't remember of anybody except the Wickes firm who used them?
A. That is all the dates and names I have in memory.
Q. 143. Didn't Mr. Boomer ever tell you your patent wasn't good for anything by reason of want of novelty, upon any occasion; this patent in suit, 187,100?
A. I presume he did; we have had a great many serious arguments on it.
Q. 144. Can you give the exact language that he used when he told you he didn't think it was worth anything?

A. No, I can't.
Q. 145. He put it on the ground of want of novelty?
A. I don't know on what ground he put it on.
Q. 146. I mean Boomer, the last witness?
A. Yes, sir.
Q. 147. Did you attend the State fair at Albany in 1873?
A. No, sir.

Redirect examination by Mr. WARD:

106 Q. 148. The first it was ever put in public use was at the fair in Saginaw, that you referred to?
A. That is when I advertised it to the public; the first exhibition and the first offer to the public; this patent (Exhibit No. 9).
Q. 149. You had simply asked Boomer's opinion of it, as an expert in cider machinery, before that?
A. That is the only reason I ever took it to him.

Recross-examination by Mr. KING:

Q. 150. Boomer, as an expert, told you he didn't think it was patentable, for reasons he then stated?
A. I presume he did for reasons he stated.

Redirect examination by Mr. WARD:

Q. 151. You didn't ask him whether it was patentable or not; you asked him whether it was an improvement; whether it was useful or not?
A. I never asked him the question at all.

Recross-examination by Mr. KING:

Q. 152. And he stated it?
A. I think he did.

Complainants rest, with the privilege of introducing certified copies from Washington at a future hearing, with the same privilege of objection on the part of the defendant which might be made here.

Adjourned.

ALBANY, *Nov.* 12, 1881.

Agreed that the original assignment from Charles G. Hampton to the Clark Pomace Holder Company, dated October 15, 1878; the assignment from George B. Boomer to the Clark Pomace
107 Holder Company, dated October 15, 1878; the assignment of John Clark to the Clark Pomace Holder Company, dated October 15, 1878; the assignment of John Clark to Charles G. Hampton, dated February 17, 1877, heretofore put in evidence, be withdrawn, and certificates be substituted in lieu thereof, and marked in the same manner as said originals.

File wrapper and contents of application for letters patent, John Clark, No. 187,100, is offered in evidence by plaintiff's counsel.

Objected to on the ground the certificate does not state it is a copy of all and every part of the file wrapper and contents of the letters patent. Marked "U. S. C. C., N. D. S. N. Y. The Clark Pomace Holder Company against William H. Ferguson. Plaintiff's Exhibit No. 12. J. M. R."

JAMES M. RUSO,
Special Examiner and Notary Public.

108 *Complainant's Testimony in Rebuttal.*

United States Circuit Court.

THE CLARK POMACE HOLDER COMPANY
vs.
WILLIAM H. FERGUSON.

Before James M. Ruso, examiner.

ALBANY, FRIDAY, *Sept.* 8, 1882.

The complainant appears with his witnesses, and defendant's counsel objects to any of the witnesses remaining in the room, expect the one being examined.

The witnesses then withdrew from the room.

OSCAR ALEXANDER, being duly sworn, testifies as follows:

Examined by Mr. WARD:

Q. 1. State your name, age, and occupation.
A. My name and age?
Q. 2. Yes.
A. Oscar Alexander.
Q. 3. Your occupation?
A. Laborer.
Q. 4. Residence?
A. Charlton, Saratoga county, New York.
Q. 5. Age?
A. 38.
Q. 6. How long have you lived in Charlton, Saratoga county?
A. I have lived there ever since the war—in fact I was born there.

Mr. KING: That isn't a good answer, since the war might have been yesterday.

A. Well, I have lived there fifteen or twenty years.
Q. 7. Do you know George C. Valentine, of Charlton?
A. Yes.
Q. 8. How long have you known him?
A. Oh, I have known him for twenty years.
Q. 9. Did you ever work for him in a cider mill?
A. I worked for him two or three days.
Q. 10. When?
A. In 1869.

Q. 11. Did he use cloths and racks in making cider at that time?
A. No, sir; not them three days he didn't.
Q. 12. How far did you live from Mr. Valentine in 1872?
A. I should think half a mile.
Q 13. In the fall of 1873?
A. A mile and a half, probably.
Q. 14. What was your business in the fall of 1873?
A. I worked in Martin Smith's cider mill three or four weeks; I couldn't give the exact number.
Q. 15. In making cider?
A. Yes, sir.
Q. 16. Were you in George C. Valentine's mill during the falls of 1872 and 1873?
A. I probably was in there in 1872, and might have been in in 1873.
Q. 17. Did you ever hear or see racks, forms, and cloths used in George C. Valentine's mill in 1872 or 1873?
A. No, sir.
Q. 18. Did you ever hear of their being used in George C. Valentine's mill before 1874?
A. No, sir.
Q. 19. If they had been in use when you were in his mill in 1872 you would have been likely to have seen it?

Mr. KING: I object to that; that is hypothetical.

109 Mr. WARD: All right.

Question waived.

Cross-examination by Mr. KING:

Q. 20. What did you do for Valentine in 1869?
A. I helped him two or three days in the cider mill?
Q. 21. What did you do in the cider mill.
A. I done just whatever he told me.
Q. 22. What was that?
A. I helped him lay up some cheese and helped take them down.
Q. 23. How many cheese did you help lay up?
A. I wouldn't want to swear to that, as to the number; might have been two and might have been three, and might not have been so many; I done whatever he told me, for I was a green hand.
Q. 24. How many cheese did you take down?
A. I wouldn't swear how many I took down.
Q. 25. Will you swear you took any down?
A. No, sir; I wouldn't, because I done whatever he told me, and I don't remember so far back.
Q. 26. Will you swear you laid any up?
A. I would swear that I helped; yes, sir.
Q. 27. How many?
A. I couldn't swear to the number, because I don't remember; might not have been more than one.

Q. 28. How long were you in the cider mill—how much time in the day?

A. I wasn't there a great while, because it was late in the fall; couldn't have been there more than seven or eight hours.

Q. 29. What time in the fall was it?

A. I couldn't say, but must have been in November; might have been later than that.

Q. 30. Weren't you digging potatoes that year?

A. Not at that time I wasn't.

Q. 31. [Did] Valentine have a horse and wagon at that time?

A. I don't know whether he did or not.

Q. 32. Anybody draw apples those two or three days?

A. I don't think they did.

Q. 33. Don't remember whether he had a horse or wagon?

110 A. I don't remember; he didn't have any team; he might have had a team and it didn't work on the power.

Q. 34. Whose team was it?

A. Lorenzo Taylor's.

Q. 35. How do you remember that?

A. Because I saw them there and saw Mr. Taylor with them.

Q. 36. How many times in 1872 were you in Valentine's cider mill?

A. I couldn't say; maybe two or three times; get a drink of cider; that is all; might have been more than that; probably was.

Q. 37. Where did he keep his cider?

A. In the cellar.

Q. 38. Where was the mill?

A. The mill and cellar is all together.

Q. 39. Where was the press?

A. The press was on the first floor.

Q. 40. Then you didn't go upstairs on any of those occasions?

A. Not when I went after a drink of cider; didn't go on that floor.

Q. 41. That was all you went in the mill for in 1872?

A. Yes, sir; it would be apt to. I didn't work for him. I might be around a little.

Q. 42. In 1873 did you go in the mill and get a drink of cider?

A. I wasn't there at all in 1873 that I remember of; I didn't live in that neighborhood then.

Q. 43. Did you see Valentine very often in 1872, '3, and '4?

A. Met him frequently.

Q. 44. You didn't hear everything that was going on in Valentine's mill every day and every week?

A. No, sir; I wouldn't be apt to; I wouldn't be hanging around there every day or every week; would be to work somewhere else, in a different part of the neighborhood.

Q. 45. How many presses did Valentine use in 1869?

A. I wouldn't swear positively, but I think he used two; he might not have used more than one.

Q. 46. You didn't see them work in 1872 and '3, so you don't know how many he used?

A. No, sir; I do not.
Q. 47. What did he lay the cheese up with in 1869?
A. Straw.
Q. 48. What else did he have?
111 A. Didn't have anything else; just as they used to lay them up in olden times. That was the first time I worked at the cider business.
Q. 49. Did he have a form?
A. A what?
Q. 50. Do you know what a form is?
A. I know what a form is in different things; form of laying up a cheese.
Q. 51. Do you know what a form is, used in cider making?
A. I don't understand what you mean.
Q. 52. Do you know what a form is, as used by cider makers?
A. I know what a form of a press is.
Q. 53. What is the form of a press?
A. Is a square piece, the timbers put together and slats nailed on them; this press I worked with—and I worked at Martin Smith's with the same—went together in four pieces, two sides and two ends—if that is what you call a form.
Q. 54. About the size of it?
A. Different sizes; I should think they would range—Smith had three presses in his cider mill, two what we called small presses and one large one.
Q. 55. I don't care anything about Smith's; what is the size of this one Valentine used?
A. I wouldn't swear positively, but I should think about six by four; might not have been as large as that.
Q. 56. Six inches by four inches?
A. Feet.
Q. 57. Six feet and four feet is the one Valentine used?
A. I don't swear positively; I never measured it.
Q. 58. How deep was it?
A. I should say three feet and a half or four feet.
Q. 59. That is what you call a form?
A. That is what I should call a form of a rack that we used there.
Q. 60. What do you mean by form of a rack?
A. Or rack; I thought you asked me what kind of a press he used and the size of it.
Q. 61. I asked you the qestion, what is a form as used by cider makers?

Mr. WARD: I object; the witness [has] already answered it; and as immaterial and irrelevant.

Q. 62. Go on.
A. Do you want the form over again?
112 Q. 63. If you haven't understood my question; I have told you exactly what I asked you?
A. I thought I had answered that.

Q. 64. If that is your answer that is enough; what sort of racks did he use?

A. He didn't use any racks.

Q. 65. Do you know what we mean by racks as used by cider makers?

A. No, sir; I do not.

Redirect examination by Mr. WARD:

Q. 66. What was used in Valentine's mill in 1872, when you were there; did you see any cheese laid up?

Mr. KING objected to — because he has already testified he didn't see any cheese laid up in 1872 in Valentine's mill.

Q. 67. Was that a fact, you didn't see any cheese laid up, or did you?

A. I wouldn't swear that I did; I might have seen them, but I wouldn't swear that I did.

Q. 68. Have you seen racks and cloths used in making cider in any mill?

Objected to on the ground he says he don't know what racks were — the cider makers used.

Q. 69. Have you seen racks and cloths used in making cider?

A. I have seen them.

Q. 70. Where?

A. Seen them in John Chambers' mill.

Q. 71. Did you ever see a crib used in any cider mill?

Objected to as immaterial; we are not on a crib patent now.

Q. 72. A crib made about three feet deep or so, of upright slats, four sides?

Objected to as immaterial and improper.

A. I answered that once.

Q. 73. That is what you intended by form?

A. Yes, sir.

Q. 74. That is the only machine that was used to press out the cheese in Valentine's mill in 1869, when you worked there?

A. That is all that I saw.

Q. 75. That was the kind he used?

A. He might have used anything else before or after I went there.

113 Q. 76. Do you understand this rack system of putting a rack between each layer of pomace?

Objected to as improper.

Q. 77. Have you heard of that system, putting a rack between each layer of pomace?

Objected to as improper and hearsay.

A. Do you mean with cloths?

Q. 78. Yes.

A. I have seen that used.

Q. 79. When you said that you didn't understand what a rack was — used by cider makers, what did you mean by a rack? Did you mean this kind of rack I just spoke of?

Objected to as leading.

Q. 80. What did you understand by rack when you said you didn't understand what a rack was?

A. I thought I answered that question.

Q. 81. Where have you seen that used—the racks and cloths?

A. In John Chambers' mill.

Q. 82. A rack between each layer of cheese?

A. Yes, sir.

Q. 83. The press and cellar were in the same place in Valentine's mill?

A. Same building.

Q. 84. During the years 1873 and 1874 you never heard of Valentine using anything different from other cider makers—any new improvement?

A. No, sir.

Recross-examination by Mr. KING:

Q. 85. When was it that you saw these racks and cloths in Chambers' mill?

A. I wouldn't swear positive, but it was not a great many years ago..

Q. 86. How many years ago?

A. About 1873 or 1874.

Q. 87. You saw a form there too, didn't you, at that time?

A. Yes, sir.

Q. 88. The fall of 1873, I suppose?

A. Yes.

MARTIN H. SMITH, being duly sworn, testifies as follows:

Examined by Mr. WARD:

Counsel for the defendant particularly requested the witness to sit in another part of the room than that which he how sits in.

114 Counsel for complainant asks for the reason of such a request.

Mr. KING: The reasons will be stated at the proper time.

Q. 1. Please state your age, residence, and occupation.

A. I am in my 60th year; place of residence, Charlton, Saratoga county, State of New York; occupation, farmer.

Q. 2. What was your business from 1869 to 1874, inclusive?

A. At that time I carried on my farm and made cider.

Q. 3. Were you acquainted with George C. Valentine at that time?

A. I have been acquainted with him for a good many years.

Q. 4. Were you acquainted with George C. Valentine at that time?

A. Yes, sir.

Q. How far did you reside from Valentine at that time?

A. I should think about two miles, but I don't know the distance accurately; maybe a little more than that.

Q. 6. During that time did you hear any rumor or report that George C. Valentine was using racks and cloths in making cider or using anything different from other cider makers?

A. I wouldn't be able to answer that question; I don't recollect anything about it, sir; I might have heard such a report and forgotten it; I don't recollect anything about it.

Q. 7. Did you give up cider-making business to a great extent in the year 1874?

Objected to as improper and immaterial.

A. The fall of 1874 was the last of my regular making; I made some after that—perhaps half as much the next year.

Q. 8. Have you ever had any conversation with George C. Valentine in reference to his being asked for royalty upon a patent or his using an alleged patent?

A. I have had a conversation in which he spoke of these things.

Q. 9. When was that?

A. That was the early part of the summer; I would think in May; might have been earlier.

115 Q. 10. Please give that conversation as near as you can—the substance of it.

Objected to as immaterial.

A. The gist of that was simply this, that he wanted to know whether I knew how long he had been using this, and stated his reasons; that was the gist of it.

Q. 11. Have you had any conversation with him since you were subpœnaed?

A. Not to any effect. I have been in his company this morning, but not to any effect; nothing material as I recollect of hearing. I haven't seen him except this morning since then.

Q. 12. During the years from 1869 to 1874, inclusive, if I understand you right, you were actively engaged in the making of cider at Charlton, Saratoga county, and you don't now remember of having heard any rumor or report, or otherwise, of George C. Valentine using racks and cloths in making cider, or using any different method from other cider makers?

Objected to as leading and immaterial.

A. I have no recollection on the subject.

Q. 13. Do you remember of my calling at your house with another young man in July of this year, I think—in the summer?

A. I recollect of your calling there with another gentleman; I couldn't give the date.

Q. 14. Didn't you then state that you had never heard up to the time of your going out of the business in 1874 of George C. Valentine's using these racks and cloths in making cider?

A. I can't say but I said so. I simply mean to say I haven't a recollection; that is, I don't recollect; that is what I would have intended to have expressed to you.

Q. 15. Do you know Nathan Seeley, at Burnt Hills?

A. Yes, sir.

Q. 16. How far is that from where you live?

Objected to as improper and irrelevant and immaterial.

A. Five miles I understand it to be.

Q. 17. Did you hear of his putting in a new press about 1873, '4, or '5?

Same objection.

116 A. I can't say whether I did or not; I saw it there; whether I heard of it before I saw it or not I can't say.

GEORGE SCOTT, being duly sworn, testifies as follows:

Examined by Mr. WARD:

Q. 1. Please state your name, residence, and occupation.

A. He has my name; residence is Ballston Spa, Saratoga county; occupation, lawyer.

Q. 2. Do you know George C. Valentine, of Charlton, Saratoga county?

A. Yes, sir.

Q. 3. Were you referee in a mortgage foreclosure in 1869 in which Thomas M. and Alexander Gilchrist were plaintiffs, Euphane Valentine and George C. Valentine and others were defendants—a mortgage to foreclose real estate in Charlton, Saratoga county?

A. No, sir.

Q. 4. Were you referee in a mortgage foreclosure in 1874 upon real estate in Charlton, Saratoga county, and as such referee did you deed the farm property to George C. Valentine, at Charlton, Saratoga county?

A. If he purchased it I did; I don't remember how that was. (Mr. King hands witness a paper.) Yes, sir; I can swear that was so.

Cross-examination by Mr. KING:

Q. 5. I now hand you this deed. See if your signature is to that paper?

A. Yes, sir; that is the way I determine it.

Q. 6. Please give a description of the property, as contained in that deed, sold by you in that sale.

A. All that certain piece and parcel of land in Charlton, Saratoga county, beginning center of the highway at the northeast corner of a lot of land formerly belonging to John Brown, deceased; thence west on said Brown's north line to the east line of Thomas Kirby's land; thence north on said line to the southwest corner of land belonging to the heirs of James T. Valentine, deceased; thence east on the south line of said land to the centre of the highway afore-

said; thence south in the centre of said highway to the place of beginning, said to contain fifty-one and a third acres, more or less.

117 Q. 7. What place was this usually called—whose farm?

A. I don't know; I don't know anything about the farm.

Q. 8. Was it called the Kirby farm; do you remember?

A. I do not.

Q. 9. It is not the piece of property on which Valentine lives?

A. I should think not; I should think from this description it was north of the village, isn't it? And Valentine lives south of the village.

Q. 10. Do you know the distance of this particular piece of property from that on which he resides?

A. It might be rather imperfect, but I should say it might be between three and four miles.

Q. 11. Will you be kind enough to look at that deed and state whether this is the deed of the farm, or part of it, upon which he resides? (Paper shown witness.)

Objected to as irrelevant and immaterial.

A. I should say it was a part of the farm on which he resides, or very near it.

Q. 12. Did you attend the sale of the farm?

A. Yes, sir.

Q. 13. This particular sale?

A. Yes, sir; this is the Gilchrist case; I was interested in attending it; I represented a judgment creditor.

Mr. KING: I now offer in evidence the deed about which the witness has been questioned secondly, dated June 5, 1869, made by William T. O'Dell, as referee, and George Merchant, of the city of Albany, purporting to be referee's deed of foreclosure in an action wherein Thomas M. Gilchrist and Alexander J. Gilchrist were plaintiffs and Euphane Valentine and others were defendants.

Objected to as irrelevant and immaterial.

The WITNESS: I should say that conveyed the farm that Valentine's father formerly owned.

Deed recorded June 5, 1869, at clerk's office in the county of Saratoga.

Complainant's counsel consents to a certified copy thereof being used instead of the original.

118 The WITNESS: Perhaps I ought to state, to be accurate, that on the sale I attended there in my own behalf as the assignee of the judgment of the Ballston Spa Bank, which had been assigned to me after the judgment.

Q. 14. I only wanted to get the fact out you were present.

Deed offered in evidence dated March 25, 1874, executed by George G. Scott, referee, to George C. Valentine; referee's deed of foreclosure

in an action brought by John A. Parent, plaintiff, and Ursula Brown, defendant, recorded May 25, 1874, in Saratoga county, book 130 of deeds, page 518.

NICHOLAS SWARTZ, being duly sworn for complainant, testifies as follows:

Q. 1. Please state your name, age, residence, and occupation.
A. I have been 59; occupation, farmer; residence, town of Charlton, Saratoga county.
Q. 2. Do you know Geo. C. Valentine?
A. Yes, sir.
Q. 3. How far do you reside from him?
A. Little over a mile I guess it is.
Q. 4. How long have you resided in Charlton, Saratoga county?
A. Ten years.
Q. 5. You moved there in what year?
A. Ten years ago; that would make——
Q. 6. Did you live there in 1872 or 1873?
A. I have lived in the town ever since.
Q. 7. In the years 1872 or 1873 how far did you live from George C. Valentine?
A. About a mile; little further the first place I lived.
Q. 8. Did you have apples to make up in cider during those years?
A. I did when I lived on the other place.
Q. 9. In the years 1872 and 1873?
A. I have not had any made up, I believe, since I lived on the place where I live now, for the last five years.
Q. 10. In the years 1872 and 1873 did you have apples to be made into cider?
A. I lived there five years—next to Hoyt's; little over a quarter of a mile, and drawed my apples; whether it was the second or third or fourth year after I lived there——

119 Q. 11. I am asking you if you had apples to be made up into cider in 1872 and 1873?

A. I do not know whether I had apples made up every year or not; I did have some; some years I did not have very much of an orchard.
Q. 12. During the years 1872 or 1873 did you hear any rumor or report that George C. Valentine was using cloths or racks in making cider, or that he was using anything different from ordinary cider makers?

Objected to as improper.

A. No, sir.

GEORGE REYNOLDS, being duly sworn in behalf of the complainant, testifies as follows:

Examined by Mr. WARD:

Q. 1. Did you formerly reside in Glenville, Schenectady county?
A. Yes, sir.

Q. 2. Did you know Edward Tobey?
A. Yes, sir.
Q. 3. Were you in his cider mill?
A. Yes.
Q. 4. Tell me what year you were in his mill?
A. The first year that I ever was in his mill that I remember of was in 1871.
Q. 5. How were cheese laid up at that time?

Objected to as immaterial and not being rebuttal.

A. Laid up in straw.

Cross-examination by Mr. KING:

Q. 6. Where do you reside now?
A. In the town of Glenville.
Q. 7. How long have you been there?
A. I was raised there.
Q. 8. How old are you?
A. Thirty-two.
Q. 9. What is your business?
A. Painter by trade—carriage painter.
Q. 10. That all the business you have been carrying on all your life?
A. No, sir; I farm it; that is the only business I carry on on my own hooks—painting; I am farming it now.
Q. 11. That all the business you ever done?
A. That is about all.
120 Q. 12. How long have you known Edward Tobey?
A. Since 1871.
Q. 13. How did you get acquainted with him?
A. I went up to Glenville to work for a man and got acquainted with him.
Q. 14. What man?
A. James Peck.
Q. 15. What were you doing for James Peck?
A. Working in a lime kiln and farming it together.
Q. 16. How did you get acquainted with Edward Tobey?
A. I do not know. He lived there at Glenville and I lived about a mile and a half from there, and I was down there every day or two—down at Glenville; he was there at the post office.
Q. 17. It would be in the day you went down to Glenville?
A. Most any time.
Q. 18. Couldn't have been doing much business at that time?
A. Got our work done down there, and had to go down most every day or two to get horses shod or wagons fixed.
Q. 19. Where was Tobey's mill situated?
A. Situated just west of the post office.
Q. 20. How far from the post office?
A. Perhaps forty or fifty rods; maybe little further.
Q. 21. Brick building or wooden?
A. Wooden building.

Q. 22. How many times were you in his mill in 1871?
A. Once that I remember of.
Q. 23. Night time or day time?
A. Day time and just night.
Q. 24. What part of the mill were you in?
A. Right in where he made his cider—by the press.
Q. 25. What were you doing there?
A. I went after a couple of barrels of cider for Mr. Peck.
Q. 26. You got the cider?
A. Yes; then he wanted me to move a couple of barrels for him down into the cellar; I put a couple of barrels on the sleigh.
Q. 27. How long were you there?
A. Just long enough to bring a couple of barrels of cider.
121 Q. 28. This was in the winter?
A. I was there with a sleigh.
Q. 29. What time of year—January, 1871?
A. It was not in January?
Q. 30. February?
A. No, sir.
Q. 31. What time—what month?
A. November.
Q. 32. You do not mean to say that you had a sleigh out in your neighborhood in November?
A. I went there with a sleigh in November, 1871.
Q. 33. What time in the month of November?
A. About the last.
Q. 34. Before Thanksgiving or after Thanksgiving?
A. I couldn't say.
Q. 35. Where was this cider that you got—in the cellar?
A. No, sir; set right in the mill.
Q. 36. Wasn't the cellar a part of the mill?
A. There wasn't any cellar part to it that I know of.
Q. 37. Where was his presses?
A. They were right in there; same floor where I got the barrels of cider.
Q. 38. Where were his tanks?
A. I couldn't tell anything about that; I didn't notice it so much.
Q. 39. They were not making cider the day you were there?
A. There was a press there.
Q. 40. They were not using it?
A. A cheese about half cut down—taking it down.
Q. 41. They were taking the cheese down?
A. Had been partly taken down; they were not to work.
Q. 42. Then how do you know what he did when he laid up his cheese?
A. I don't. I know the cheese that was there was laid up with straw—what was left.
Q. 43. That is all you know about it?
A. Yes.
Q. 44. How many presses did he have there?
A. Couldn't tell you.

Q. 45. How were the screws?
A. I couldn't tell you.
Q. 46. Couldn't tell whether they were wood or iron, could you?
A. No, sir.
Q. 47. Do you know whether he had more than one screw in the press?
A. No, sir.
122 Q. 48. See any forms around there?
A. Not that I remember of.
Q. 49. See any racks?
A. No, sir—that I know of.
Q. 50. All you know about is you went there to get some cider and drew away four barrels of cider.
A. I drew away two for him.
Q. 51. You did not see them work there?
A. No, sir.

JONATHAN HARVEY, being duly sworn in behalf of the complainant, testifies as follows:

Examination by Mr. WARD:

Q. 1. Where do you reside?
A. Round Lake, Malta.
Q. 2. How long have you resided there?
A. Four years.
Q. 3. Did you ever reside at Charlton, Saratoga county?
A. Yes, sir.
Q. 4. When?
[A.] I lived there from 1868 to 1871.
Q. 5. Inclusive?
A. Yes, sir.
Q. 6. Did you know George C. Valentine then?
A. Yes, sir.
Q. 7. How near to him did you live?
A. About a mile and a half.
Q. 8. What was your occupation when you were there?
A. I was a farmer when I was there.
Q. 9. Were you in George C. Valentine's mill during the years 1869, 1870, and 1871, in cider-making seasons?
A. Yes, sir.
Q. 10. Did you see any racks and cloths and forms used in making cider in his mill during those years?
A. Well, now, then, if you will tell anything about the kind of a rack you have reference to——
Q. 11. A rack laid between each layer of pomace.
A. No, sir; didn't see anything of that kind.
Q. 12. Did you see cloths used there during that time?
A. Yes, sir.
Q. 13. How much and what way?
A. It was laid up on the outside of the cheese to keep the pomace from coming through.

123 Q. 14. What was the cheese laid up in?

A. I should call it a rack, but it was a square rack altogether; pressed; regular crib.

Q. 15. How were the cloths used in connection with that?

A. Standing up at the sides.

Q. 6. Hanging around the sides?

A. Yes, sir.

Q. 17. Was that used all the time you were there?

A. I don't think it was all the time; no, sir.

Q. 18. You say racks were not used between the layers at all?

A. Never saw any.

Q. 19. Did he use straw any while you was there?

A. Yes, sir; used straw more or less with these cloths generally.

Q. 20. Did you ever see him lay up with straw the old-fashioned way—with a hoop or form?

A. Yes, sir; hold on; I never saw it laid up any other way but just the regular crib; that was the only way I ever saw it laid up.

Cross-examination by Mr. KING:

Q. 21. How often were you there at the mill in 1869, 1870, and 1871—Valentine's cider mill?

A. I was there quite frequently.

Q. 22. How frequently?

A. Well, sometimes I might be there twice in a week and sometimes oftener than that.

Q. 23. What were you doing there?

A. I drawed my apples there more or less to him those falls.

Q. 24. All three falls?

A. I wouldn't swear positive that I drawed them there all three falls.

Q. 25. What fall didn't you?

A. I couldn't swear positively to any fall whether I did or didn't; I was in the habit of drawing some there and sometimes some to Mr. John Chambers.

Q. 26. How often were you there in 1869?

A. I think it is safe enough to say twice a week on an average.

Q. 27. For how many weeks?

A. Through the month of October I was there all the time backwards and forwards more or less, but sometimes I was busier with work than I was others, and I wasn't there so much.

124 Q. 28. He wasn't making cider every time you were there?

A. No, sir.

Q. 29. How many times have you seen him make cider in the year 1869?

A. That is a pretty difficult question to answer; it is so long ago.

Q. 30. You have testified to some things; it isn't any more difficult to — that, is it, than some of the others you have stated?

A. Yes, sir; I think it is.

Q. 31. How?

A. I was there frequently when he wasn't making cider and sometimes he was.

Q. 32. How many times do you think you saw him make cider in the year 1869?

A. I think I am safe enough to say I was there a dozen times when he was pressing cider.

Q. 33. How many times do you think you was there when he was laying up cheese?

Objected to as irrelevant and immaterial.

A. I couldn't say about that at all.

Q. 34. Can you swear to any time at all?

A. I could swear I saw him lay up cheese, but I wouldn't swear to the date.

Q. 35. Will you swear to more than once?

A. No.

Q. 36. Will you swear to the year?

A. I will swear that I saw him lay up a cheese in 1869; I think more, but I wouldn't swear positively.

Q. 37. How many will you swear to in 1870?

Objected to as irrelevant and immaterial.

A. I was there several times, but I couldn't say how many cheeses I saw him lay up; they sometimes would be laid up when I got there.

Q. 38. Do you swear that you saw him lay up any cheese in 1870?

Objected to as irrelevant and immaterial, and the witness has sworn that he saw the cheese already laid up.

A. I can't swear as to that positively.

Q. 39. In 1870?

A. Yes, sir.

Q. 40. How many?

A. I can't swear but to once.

Q. 41. When was that?

125 A. That was in 1870, in the fall; I can't tell the day of the week, and I can't the day of the month.

Q. 42. What is the day of the week?

A. The day of the week was on Monday; it was in the month of November, I know, from other transactions that happened at the same time.

Q. 43. That is the only time?

A. That is the only time I could swear definitely to.

Q. 44. How many times in 1871?

Same objection.

A. I wouldn't want to swear definitely to any time I was there when he was laying up cheese; I was there and got a drink of cider.

Q. 45. You won't swear as to his laying up a single cheese in 1871?

A. I won't swear positively.

Q. 46. Did you have any business transaction with him in 1869—with George C. Valentine?

A. I sold him some apples.

Q. 47. Did you have any other business transaction?

A. Not to my recollection now.

Q. 48. Did you make any agreement with him of any kind?

A. Not to my recollection now.

Q. 49. Did you agree to work in the mill or about the cider mill in 1869?

A. I helped him different times and different falls, but I don't have any recollection of working in 1869 in the mill.

Q. 50. Didn't you make an agreement you would grind apples for him and furnish a team in 1869?

Objected to as irrelevant and immaterial.

A. We had a talk at that time, but I was thinking it was longer before than that. I was running the farm at this time. I talked one fall of going in with him and putting my team on and grinding apples.

Q. 51. Don't you remember you made such an agreement as that and didn't keep it?

Objected to as immaterial and irrelevant.

A. I know I did not keep it.

Q. 52. Do you know what you did in place of grinding apples that fall of 1869?

A. No, sir.

126 Q. 53. Don't you remember of being absent selling patent rights?

A. I couldn't swear whether that was 1869 or 1870.

Objected to.

Q. 54. If it was either 1869 or 1870 you were away, out of the town of Charlton, weren't you?

A. Not in the month of October. I did not go away until the month of December. I went away the last of November or first of December. I was away during the months of December, January, and February; came home the first of March.

Q. 55. Did you ever see, during the years 1869, 1870, and 1871, a form used by cider makers in Valentine's mill, or some people call it a hoop?

A. I don't know whether you call it a hoop or rack; I always called it a rack.

Q. 56. Did you ever see such a thing?

A. I saw it there.

Q. 57. In those years?

A. As used by cider men.

Q. 58. Did you see racks made with slats or pieces of board nailed across each other?

A. This hoop I have reference to is made of pieces of board, narrow strips with a heavy timber on, and that forms a square the same as that desk is. That is the way I saw it.

Q. 59. Did you see pieces of slat or small pieces of long wood joined together crosswise and placed between layers of cheese?

A. No, sir; I have no recollection of ever seeing it or ever seeing it used to this time.

Q. 60. Did you ever see separate pieces of board, sticks, laid in between layers in Valentine's mill in 1869, 1870, or 1871?

A. I have no recollection of it; still it might have been done and I not know it. I know one thing about Valentine's mill—that people came quite a way for cider for some cause.

Q. 61. Did you ever see a form made of four pieces of board nailed together at the end in his mill in 1869 or 1870 or 1871?

A. I have no recollection of it.

Q. 62. You only saw him lay up one cheese in 1869?

A. That is all I would swear to.

127 Q. 63. How many presses did he have in the mill in those years?

A. I think the screws gave out and he was only using one press.

Q. 64. How many presses did he have?

A. There was two there when they were in order.

Q. 65. Wooden screws or iron screws?

A. Iron screws.

Q. 66. Solid iron screws?

Objected to as immaterial and irrelevant.

A. The screw was solid iron; I don't know what the nut was; I think it was iron.

Q. 67. Both the presses had iron screws, you think?

A. I think one of them; some part of this time the threads were what we call ripped, or so he didn't use one of them part of the time.

Q. 68. Do you know whether he had more than one screw to the press?

A. Yes, sir; there was two screws to a press.

Q. 69. Both of them?

A. In using the one I wouldn't say; but I think they were both the same.

Q. 70. What year was it one of these presses was disabled and they did not use it?

A. I think it was in the year 1870 he did not use but one press, and it runs in my mind he afterwards got a screw somewhere else and used it the same year; I think before the season he got a screw; I know he was talking about it.

Q. 71. What kind of a screw was it?

A. Solid iron screw, I believe; looked like it anyway.

Q. 72. This was in 1870?

A. Yes, sir.

WILLIAM LAWSING, being duly sworn in behalf of the complainant, testifies as follows:

Examined by Mr. WARD:

Q. 1. State your name, age, and residence.

A. I reside in the city of Schenectady; my name is William D.

Lawsing; I will be thirty-three years of age the 27th day of next January.

Q. 2. What is your occupation?

A. Carpenter.

128 Q. 3. Did you formerly reside in Glenville, Schenectady county?

A. Yes, sir.

Q. 4. Did you know Edward Tobey while you were there?

A. Yes, sir.

Q. 5. Did you ever work for him in his cider mill?

A. I did.

Q. 6. In what year?

Objected to as not rebuttal.

A. I think it was in the year 1875.

Q. 7. How long did you live in Glenville at that time?

A. Sixteen or seventeen years.

Q. 8. How long had you known Tobey?

A. Ten or eleven years.

Mr. KING: From this date?

A. No; previous to his death.

Q. 9. Is Tobey dead now?

A. He is.

Q. 10. How near Tobey's mill did you live?

A. I resided probably 2,000 yards.

Q. 11. How did Tobey lay up his cheese when you worked for him in 1875?

A. When we first commenced making cider he laid them up in a rack with straw and then he changed to cloths.

Q. 12. Previous to this had you ever been in his mill?

A. Yes, sir.

Q. 13. How often?

A. I was there a number of times a day for different years; not every day, but I lived in the village and I happened in there to get a drink of cider or something of that kind; I was on intimate terms with him.

Q. 14. When did you first know of Tobey using cloths?

A. That is the first I knew of it.

Q. 15. In 1875?

A. Yes.

Mr. KING: The whole of this testimony is objected to on the ground it is not rebuttal.

Q. 16. How long had these cribs been used that you speak of—1875?

Objected to on the ground the witness did not say he had used cribs.

129 Q. 17. What did you mean by racks?

A. The cheese was laid up in this crib or rack; I call it rack.

Q. 18. How high?

A. It would run up when the cheese was completed four feet and a half probably.

Mr. KING: This line of testimony is objected to for the same reason.

Q. 19. Who made it?

A. My father and me used to work at it.

Q. 20. Describe it as near as you can.

A. The crib was made of plank, I think, an inch and a quarter, and made square, and these planks were locked together, set on top of each other.

Q. 21. How big was it?

A. I couldn't give the size; probably five feet square inside; might have been more or lees.

Q. 22. And how high?

A. After the rack was completed, I should think it was four or five feet high.

Q. 23. And cheese was laid up inside of this?

A. Yes, sir.

Q. 24. When was that first made?

A. I think we built that in 1874, although I am not positive as to that.

Q. 25. What had you seen Tobey use before you commenced to use this crib?

A. I had seen him use straw.

Q. 26. How long was this crib used?

A. We didn't use it a great while; it didn't answer the purpose, we thought.

Q. 27. When you discarded that what did you commence to use?

A. We used cloths—canvas.

Q. 28. Did he use anything between the layers of the cheese when he used cloths? How did he lay them up with cloths?

A. When he used cloths he had a ring built about the size of the cheese, just the size of the cheese inside, and put the cloths in that ring and filled it with pomace, and then wrapped the cloths over the pomace, and then we had two sticks that was shoved on top of that cheese, and the ring would be placed on top of those sticks, and another ring on, and in that way four or five cheese put on.

130 Q. 29. When do you say he introduced that system?

A. After we discarded these racks.

Cross-examination by Mr. KING:

Q. 30. What has been your business all your life?

A. From my infancy up?

Q. 31. From the time you had an opportunity of doing any business.

A. I first went away from home and worked on a farm about three months.

Q. 32. When was this?

A. When I was sixteen years old; I might have been older and

might have been younger; then I came back home and stayed with my father a few years; then I went to sea, and was gone there nearly two years.

Q. 33. What year did you go to sea?

A. I think it was in 1868.

Q. 34. You were absent two or three years?

A. Absent nearly two years.

Q. 35. What did you do after that?

A. I came home and commenced working at the carpenter's trade; learned the trade of my father; I am employed now in the Schenectady Locomotive Works.

Q. 36. When did Edward Tobey die?

A. He was killed at Amsterdam by the cars.

Q. 37. When?

A. I understand he was killed; I wasn't there when he died.

Q. 38. When was this?

A. I don't know whether it was two or three years ago; I think it was two years ago; I don't remember exactly.

Q. 39. Your father worked in that mill of Tobey's?

A. Not in the cider mill.

Q. 40. He worked in the mill doing carpenter's work?

A. Yes.

Q. 41. Do you know whether he worked in that mill before 1875?

A. I think he did.

Q. 42. Do you know that he did?

A. Built those racks and the bottom to this press.

Q. 43. What else?

A. He done other work for him; I don't know what it was; I wasn't with him all the while.

131 Q. 44. What year was this?

A. I think it was in 1874 we built the racks.

Q. 45. Do you remember whether he did any work before that?

A. I don't remember.

Q. 46. Do you remember whether he built a press for him?

A. I remember of our putting the bottoms together for a press.

Q. 47. Do you remember when that was?

A. Whether that was in 1874 or 1873 I don't know.

Q. 48. Do you remember of his taking out any screws or putting any screws in?

A. I do not remember anything of that; what we done on this press that I helped him was putting this bottom together; the screws were already there.

Q. 49. Do you recollect whether he had any iron screws at any time in the press?

A. These iron screws were the screws we built the bottom for.

Q. 50. Do you recollect seeing any hollow screws around there?

A. No, sir.

Q. 51. What were you doing in the mill before 1875?

A. Done that work; that was all I did.

Q. 52. I thought you stated you were in there about every day?

A. I was in there as I passed by the mill—dropped in—but I wasn't employed there.

Q. 53. How long did you stay each time?

A. Sometimes I would stay an hour and a half, and sometimes less and sometimes longer.

Q. 54. Night time or day time?

A. *Answer.* Both.

Q. 55. Did you see them lay up any cheese every time you went there?

A. Yes; I saw cheese laid up.

Q. 56. Every time?

A. No; not every time.

Q. 57. Between 1869 and 1874 how did he lay up his cheese?

A. He laid them up in straw.

Q. 58. How did he lay them up?

A. I wasn't posted in the business then; he had a wooden screw.

Objected to — he says he laid them up in straw, and he is not an expert in cider, and the question is irrelevant.

Q. 59. State how he laid up his cheese.

132 A. I don't know how it was done; had a wooden screw; I know that.

Q. 60. How is it you can testify so clearly on the direct examination when you can't on the cross-examination as to the manner of laying up cheese?

A. I know how I laid them up while I worked there, and previous to that I wasn't acquainted with the process of making cider.

Q. 61. You do not know anything about the manner of his laying up cheese prior to 1875?

A. I have seen them laid up with straw.

Q. 62. You can't give a description of the manner of laying up cheese by Edward Tobey at his cider mill at Glenville prior to 1875?

A. I couldn't give a minute description; I can tell how they looked to me as they were laid up. They appeared to me they were laid up with straw, and were tucked in next to the screw and another layer on top of that.

Q. 63. You have not answered my question yet.

Question repeated.

Objected to. The question has already been answered.

Question repeated.

Plaintiff's counsel asks the examiner to read the answer.

Defendant's counsel objects to the examiner reading the answer.

(The answer was not read.)

The WITNESS: I thought I did. What is the question?

Question repeated.

A. Not a minute description.

Q. 64. Give a description as best you can.

Objected to, as the description has already been given.

A. They were laid up in straw, and I think they were laid up one cheese on top of the other. The straw was pulled up around the cheese and wrapped around the screw or tucked in around the screw and another put on top of that. That is the way it appeared to me.

Q. 65. How many screws were in a press, and where were the screws located as regards the press itself in Tobey's mill in Glenville prior to the year 1875?

133 A. I think there were two screws; I am not positive of that.

Q. 66. Where were they located in the press?

A. I have an impression they were on each side of the press; anyway, a little distance apart, and the cheese was built in between them or around them. I am not positive.

Q. 67. How did these screws work?

A. They were screwed down or screwed up; there was a long lever on them, and they run along on that lever.

Q. 68. Were they fastened in anything or upon anything?

A. They set upon the floor. I don't know how they were arranged.

Q. 69. Which end of the screw was up?

A. The lever was on top of them.

Q. 70. Did the screw work in anything at all?

A. Must have worked in a nut or something at the bottom. I never examined it.

Q. 71. Work in anything at the top?

A. I don't know how it was arranged. There was a head on top of the screw or screws. Whether there were two screws in one press or two screws in two presses, I am not clear on that. I have a very faint recollection of it anyway, and I think the screws run down. The press settles. The boards put on top of the cheese, I think, settles.

Q. 72. You had boards on top of the cheese?

A. We had something on top. I think it was boards or plank to cover the top of it.

Q. 73. Any beam the screws run through.

A. I don't know.

Q. 74. How is it you are so particular about knowing they used straw?

A. Because I noticed the straw there; noticed them when they were cutting down the cheese; noticed the straw in the pomace.

Q. 75. When was this?

[A.] Some time in 1875; between 1875 or 1869 and 1870.

Q. 76. I thought you were at sea in 1869 and 1870?

A. I was at sea in 1868 or 1869.

Q. 77. I thought you were absent two years?

A. Nearly two years.

Q. 78. How could you see a cider mill on land?

134 A. I didn't see it; I saw it between the years 1875 and 1870, or 1869; I don't say what year I saw it; if I wasn't there of course I couldn't see it.

Q. 79. How many times did you see him lay up cheese between 1869 and 1875?

A. I couldn't tell you how many times.

Q. 80. Did you see any form or hoop in the mill between 1869 and 1875?

A. I don't remember that.

Q. 81. Don't you remember of seeing an iron hoop—two irons joined together?

A. No, sir; we used that when I laid up press in 1865.

Q. 82. 1865?

A. 1875 I mean.

Q. 83. That hoop was in the mill before you worked there in 1875, wasn't it?

A. Not that I ever noticed.

Q. 84. It was there when you went there?

A. I don't know whether they had it made when I was there when they commenced on the canvas, or whether it was there before I went there; that I couldn't say; I didn't see it made—the hoop.

Q. 85. So if he had it before you went there you do not know how long he had it?

A. I don't know as he had it before I went there.

Q. 86. If he had it before you went there, you do not know how long he had it?

A. If he had it before I went there, I don't know anything about it.

Q. 87. Whereabouts were those presses, in what mill; where was the mill located in 1875?

A. Located at a place called Glenville Four Corners, or West Glenville.

Q. 88. Was it a new mill?

A. Yes, sir.

Q. 89. How long had he had that mill?

A. I don't know how long.

Q. 90. Don't know how long?

A. No, sir; I don't know when it was built.

Q. 91. Did you build the mill in 1875?

A. Did I build the mill?

Q. 92. You and your father?

A. No, sir.

Q. 93. Wasn't this work on a new mill?

A. No, sir; this was work on a press.

Q. 94. Wasn't the press built the year of the new mill?

135 A. I think we built them in the new mill; we might have built them in the storehouse or barn of the store, but I think we built them in the new mill.

Q. 95. All this you are testifying about is about a new mill?

A. I worked in the new mill.

Q. 96. He had another mill?

A. He did previous to building the new one; the wooden screws were in the old mill; I noticed them in the old mill.

Q. 97. How long before 1875 did you notice wooden screws in the old mill?

A. I don't know; some time.

Q. 98. All you have been testifying about on this examination has been about a new mill?

A. All I have been testifying—that is, as far as my work is concerned—was in the new mill.

WILLIAM CARROLL, being duly sworn in behalf of the complainant, testifies as follows:

Examined by Mr. WARD:

Q. 1. Where do you reside?

A. Glenville, Schenectady county.

Q. 2. How long have you resided there?

A. All my life, with the exception of two years.

Q. 3. How old are you?

A. I am forty-seven years old; I was born in 1835.

Q. 4. Did you know Edward Tobey in his lifetime?

A. Yes, sir.

Objected to as immaterial and not rebuttal.

Q. 5. Were you in his cider mill in Glenville?

A. Yes, sir; I worked for him every year that he lived in Glenville, more or less.

Q. 6. What was the last year he made cider there?

A. 1876.

Q. 7. When did he commence?

A. He commenced in 1867, if I recollect right.

Q. 8. What did he first use when he first commenced to make cider to lay up his cheese with?

A. He used wooden screws and straw.

Q. 9. Do you remember when he first commenced to use a crib—racks about four or five feet square?

A. Made out of wood?

136 Q. 10. Yes.

A. Yes; I think I do.

Q. 11. When was that?

A. I think he did not use any crib of that kind until 1875 or 1876.

Q. 12. Did he ever use cloths in making cider?

A. Yes, sir; I know he used cloths in making cider; we called them blankets.

Q. 13. When did he commence to use blankets in making cider, if you remember?

A. I do not remember of his using cloths until 1873 or 1874.

Q. 14. You were in his mill every year up to that time?

A. I worked for Tobey every year; I was in his mill every year.

Q. 15. Do I understand you to say that the first that you recollect of cloths being used was 1873 or 1874?

A. 1873 or 1874 that I remember of their being used.

Cross-examination by Mr. KING:

Q. 16. They might have been used earlier than that—cloths might have been used by Tobey in his mill earlier than 1873?

A. I swore that was as long as I remember of their being used.

Q. 17. What two years was it you were not living in Glenville?

A. That was before Tobey began to make cider.

Q. 18. What years were they?

A. I was selling brooms for a man.

Q. 19. What years?

A. I can't tell; when I was about nineteen or twenty years old—I think so; along about that time.

Q. 20. Where did you see him use these cribs—in the old or new mill?

A. What do you mean by the crib—this wood arrangement that matches in?

Q. 21. You have already testified about a crib; now I want to know whether he used this crib in his old or new mill.

A. In the new mill I saw what I termed a crib.

Q. 22. When did he first have this new mill?

A. In 1872.

Q. 23. Where was his first mill?

137 A. His first mill was located about fifteen or twenty rods west of the hotel at Glenville Corners, Schenectady county.

Q. 24. You have been testifying all this time in relation to the new mill, I suppose?

A. I have been testifying to what I did testify to exactly.

Q. 25. You were testifying in relation to this new mill only?

A. I testified when I knew him to use—when you asked me in relation to the crib, and that is in 1876, I think. That is the first I ever knew a crib to be used. He used straw up in the old mill.

Q. 26. Trot out all you have got to say now and let me get a chance by-and-by, only tell me when you get through.

Objected to as indefinite, irrelevant, and immaterial.

Q. 27. Are you through now?

A. Oh, yes, sir.

Q. 28. How often were you in the old mill?

A. I worked for Tobey all the years he done business in Glenville; I can't tell you how often I was in there.

Q. 29. What did you do when you worked for Tobey all these years?

A. I worked at general work—cider business, and whatever business he had to do.

Q. 30. Driving cattle and butchering?

A. Working in harvest. I worked for him perhaps half of the year sometimes some years.

Q. 31. How many cheese did you lay up in 1869?

A. Couldn't tell.
Q. 32. Did you lay up any?
A. Yes, sir; I know I helped to lay up some; I don't know that I ever laid up a cheese alone in my life.
Q. 33. How many did you help to lay up?
A. I couldn't tell.
Q. 34. How many in 1870?
A. I don't know; I worked for Mr. Tobey at general work.
Q. 35. How many cheese did you help to lay up in 1870?
A. I can't tell.
Q. 36. Did you help to lay up any?
A. Yes, sir.
Q. 37. You haven't any idea how many?
A. Oh, no.
Q. 38. How many in 1871?
A. I don't know; I can't tell the number of cheese.
138 Q. 39. When did he commence to manufacture cider in 1869?
A. He commenced the usual time of making cider.
Q. 40. What is the usual time?
A. I have made cider for him by the middle of September.
Q. 41. Did you make cider for him in September, 1869?
A. I can't tell what time I began.
Q. 42. When did you end in 1869?
A. We most always closed up in that year.
Q. 43. When did you stop making cider in the year 1869?

Objected to as indefinite, irrelevant, and immaterial.

A. I can't tell.
Q. 44. Have you any recollection of when you commenced and when you ended in 1870?

Same objection.

A. No, I can't tell.
Q. 45. Same question in relation to 1871?
A. I can't tell when we commenced to make cider there—began the usual time.
Q. 46. What sort of press did he have in 1869?
A. All the press I ever knew of his using, the time I made cider for him up in what is called the old mill, was wooden screws.
Q. 47. Did he have more than one press?
A. No, sir; none that I ever saw; not to the best of my memory.
Q. 48. He only had a wooden screw, and one wooden screw in that one press?
A. Two wooden screws.
Q. 49. Didn't have any iron screws in the old mill?
A. Not that I remember; not in use that I remember.
Q. 50. Did you ever see any hollow iron screws around there—around the mill—the old mill?
A. I think there was a cast-iron screw about the old mill.
Q. 51. Was it hollow?

A. I can't tell just the fixture there was about it.

Q. 52. Don't you remember of his selling a pair of old hollow iron screws he had in his mill?

A. No, sir; I do not.

139 Q. 53. Haven't you stated to Mr. Valentine, within the past ten days, that there were two presses—one with an iron screw and one with a wooden screw?

A. No, sir; I think not. Mr. Valentine was asking me some questions; I didn't know what he was asking me for, and I thought I had a right to answer, the same as he had a right to ask them.

Q. 54. Didn't you state one was a wooden and one an iron screw in the same press in the old mill?

A. No, sir; anybody can know better than that who has ever seen a cider mill; there is one iron screw there not in use; I think I told Mr. Valentine there was one iron screw there not in use; that I never saw it in use; I think I told him so.

Q. 55. Is that screw there now?

A. I don't know.

Q. 56. Do you know what became of it?

A. No, sir; I do not.

Q. 57. You have seen the plaintiff's attorney, Mr. Ward?

A. Yes, sir; I have seen him.

Q. 58. When was the first time you saw him?

A. I don't know; I couldn't swear when I saw him; Mr. Ward could answer you that probably.

Q. 59. I am asking you.

Objected to as irrelevant and immaterial.

A. I couldn't swear; probably about the middle of June, perhaps.

Q. 60. What did he come to see you for?

Objected to as irrelevant and immaterial.

A. You will have to talk a little loud; I am deaf; Mr. Ward came to me and asked me if I had worked for Mr. Tobey.

Conversation objected to on the ground the party is not interested in the suit.

The WITNESS: I told him I had, and he asked me if I knew when Mr. Tobey began to use cloths in the cider mill; I told him I could not tell positively when he did; he asked me if I knew anything about Tobey's business; I think they told him I did up at the corner; he asked me what I recollected—what was the best recollection

140 I had in reference to Tobeys using cloth; I told him the best recollection I had was after he moved down to the new mill; I think so; I think that is about all the conversation me and Ward had; he didn't tell me at that time what he was there for.

Q. 61. When did you see him after that?

A. I declare I can't tell; maybe four weeks.

Q. 62. What was the conversation then?

A. He came to see me, asked me if I had thought the matter over in relation to the use of the cloth, and I told him to the best of my

remembrance I did not remember of Tobey's using cloths up in the old mill; I think Mr. Ward told me Mr. Hammond sent him there; I think so; said I would know all about it, whether Tobey used cloths or not; I think Mr. Ward told me so; that is the best of my remembrance or judgment; Hanson B. Hammond.

Q. 63. He then told you what he was after, didn't he?

A. I don't know whether he did or not; I think he did.

Q. 64. Didn't he tell you he was trying to establish the fact that Mr. Tobey hadn't used those racks and cloths prior to 1874?

A. I won't swear to what he told me, but I will swear that I don't know even now what Mr. Ward or you—either one of you—are trying to establish in this case.

Q. 65. How many letters have you received from Mr. Ward?

A. I have received, I think, four.

Q. 66. How much money has been contained in those letters; how much money have you received from Mr. Ward for being a witness in this case?

A. I have not received any for being a witness in this case.

Q. 67. What did Mr. Ward pay you money for?

A. Mr. Ward said he had a case in hand; he didn't explain the case to me so that I understood it; Mr. Ward said he had a case to try; he did not tell me where, but he asked me to go and see some men that he supposed would be a benefit to him, he finding out by Mr. Hammond I had worked for Mr. Tobey, and I went and saw those men for Mr. Ward, and he didn't give me any more than would be honestly my actual expenses.

Q. 68. How much did he give you?

141 Objected to as irrelevant and immaterial; nothing to do with the case.

A. He gave me—I don't know as I can swear as to the exact matter how much he gave me; I will get it right if I can; I think Mr. Ward gave me seven or eight dollars to go and see these men with.

Q. 69. Then he told you what he wanted to prove?

A. I don't know as he did.

Q. 70. He wanted you to see some people to be witnesses for himself on this case?

A. He wanted me to see Mr. Lawsing.

Q. 71. The last witness?

A. Yes, sir; to see what he knew about it.

Q. 72. Who else?

A. No one else; yes, Jacob Fonda; he worked in the mill with me and worked in the mill of Tobey; worked in the mill a number of years.

Q. 73. Did you see Fonda?

A. No, sir.

Q. 74. Why is that?

A. Well, I didn't see him.

Q. 75. Who saw him for you?

A. Nobody.

Q. 76. Why didn't you go and see Fonda?

A. Because I didn't go and see him.

Q. 77. Because you found out Fonda wouldn't swear?

A. Oh, no, not by any means; I didn't find out any such thing as that; I never saw Fonda since Ward spoke to me.

Q. 78. Who did?

A. I don't know anybody did.

Q. 79. You know perfectly well somebody did.

A. See Mr. Fonda?

Q. 80. Yes.

A. I don't know anybody ever did; I didn't.

Q. 81. You know who did?

A. No, sir; I do not.

Q. 82. You know Mr. Fonda would not swear in the matter you people were anxious to have him swear?

A. I have no knowledge whatever in the matter; no way, shape, or manner; I don't know what Mr. Fonda would swear to; I have no knowledge in the matter.

Q. 83. Did you go to see anybody by the name of Witbeck?

A. No, sir; I never did.

142 Q. 84. How many more people were employed in your neighborhood to hunt up testimony in this case?

Objected to as immaterial and irrelevant.

A. I don't know of anybody else; I don't know I was employed to hunt up testimony; I suppose that would be a legitimate business, otherwise I wouldn't have done that; I presume it is yet.

Q. 85. You are in constant communication with a man by the name of Benjamin Knapp about this case?

Objected to as immaterial.

A. I will swear positively that I have not seen Mr. Knapp, to my knowledge, in fifteen months, until I saw him on the cars at Schenectady to-day.

Q. 86. Where is he now?

A. I don't know; I have seen him in this house to-day; I have — no conversation with Mr. Knapp before to-day.

Q. 87. You knew he was interested in this case to hunt up testimony?

A. No, sir; I did not.

Q. 88. Why did you make those remarks around Charlton and Glenville, that you and Knapp were employed to hunt up testimony?

A. I have not been to Charlton in eighteen months; I haven't been, as I know of, in the town of Charlton in two years.

Q. 89. How far is Glenville from Charlton?

A. Four and a half or five miles, they call it.

Q. 90. Where does Benjamin Knapp live?

A. He lives somewhere in Charlton village; I don't know where he lives; I couldn't designate the place he lives in; I have been told, two or three years ago, where he lived, but I don't know; I haven't seen Benjamin Knapp, to my certain knowledge, in a year and a half, and I don't know but two years, until I saw him this

morning, and he took the cars at Schenectady; I saw him on the way down.

Q. 91. You state positively that you haven't stated to any living person at Glenville or Charlton that you and Knapp were employed in this case?

Objected to as irrelevant and immaterial.

A. No, sir; I haven't stated to nobody I was employed; no how, no way, shape, or manner; that is so; I merely know Mr.
143 Knapp; that is all; Mr. Knapp has never been to my house, and I have never been to his house.

Q. 92. What conversation have you had at the store with people in Glenville about this case?

A. Since this thing has been in vogue there has been considerable conversation there.

Q. 93. How many people told you if you came to the stand and swore in the manner in which you have done to-day you wouldn't be telling the truth?

A. Not any. Lots of people up my way will swear that Tobey didn't use cloths until that time. I won't swear positively but what he did. I used cloths for Tobey, and used the old-fashioned press with straw for Tobey, and what year I quit using it I couldn't tell.

Redirect examination by Mr. WARD:

Q. 94. Did you mean to say you used cloths in the old mill with wooden screws?

A. No, sir; I never used any there to my remembrance; to the best of my memory I never did.

Q. 95. You were paid four dollars and a half witness fees, weren't you, when you were subpœnaed?

A. Yes, sir.

Recross-examination by Mr. KING:

Q. 96. What day were you subpœnaed?

A. I can't tell even that. I didn't pay any attention to it. This is a thing that don't interest me no more than to bring me here.

Q. 97. Did you help to move the wooden screws from the old press to the new press?

A. I never knew of any wooden screws being used in the new press at all.

Q. 98. Did you help move the iron screw?

A. No; I did not. I can't tell. I worked for Tobey at general work for ten years—every year he lived there in that place.

Recess.

Afternoon session.

ORMIE DE GRAFF, being duly sworn in behalf of the complainant testifies as follows:

144 Examined by Mr. WARD:

Q. 1. State your name age, name, and occupation.

A. I was twenty-nine years old the 30th of September last; residence, 773 Broadway, Albany, N. Y.; occupation, locomotive fireman on the N. Y. C. & H. R. R.

Q. 2. Did you ever reside in Glenville, Schenectady county?

A. Yes, sir.

Q. 3. Did you know Edward Tobey?

A. Yes, sir.

Q. 4. When did you leave there?

A. I left there, I think, in the winter or spring of—first left there in the winter or spring of 1874 or 1875, I think; I wouldn't be positive about that I think; when I first came to Albany.

Q. 5. Then did you go back there after that?

A. I went back there after that, I think, in the winter or spring of 1875.

Q. 6. Did you ever work for Tobey in making cider?

A. I did.

Q. 7. When was that?

A. That was in the fall of 1876.

Q. 8. How did he lay up his cheese when you were up there?

A. He used two different methods that fall while I was there; I was there the whole time; first he used for a small portion of the season, he used straw in a sort of a rack; he had an inch hard-wood rack, an inch thick, and notches in it, laid up in that shape, in the form of a square; after he used them a very short time he went and got some bagging and used that; got it sewed up and had a single screw and laid up his cheese and wound it around; and he had hoops made of old wagon tire, one placed above the other, with a standard between them, and after we would lay up a cheese we would lay this hoop up and put two sticks across and lay up another bag and fill that with pomace the same as before, and draw it all up around and twist it around the screw, and building one top of another the weight of one would hold the other until we built up several of them.

Q. 9. How long had you lived at Glenville before this?

A. I have lived there nineteen years.

145 [Q.] 10. How near to Tobey's mill?

A. I guess the furthest from his mill at any time, I guess two miles; I knew Tobey from the time I knew anybody—from a little child; but I think it is about that distance.

Q. 11. Did he ever use cloths in his mill before this time?

A. Not that I know of; I never knew him to.

Q. 12. You had been in his mill before that?

A. Oh, yes; I suppose I was there every season; used to go up to Glenville after my mail—go up and get cider and that sort of thing; he was always a free-hearted fellow and friendly.

Cross-examination by Mr. KING:

Q. 13. Where were you born?

A. I was born in this county, town of Bethlehem, in 1852.

Q. 14. When did you first live in Glenville?

A. I guess I was about three years old when my people moved up there.

Q. 15. You stayed continuously there until about 1875?

A. Yes, sir.

Q. 16. Ever worked making cider?

A. Never before this fall that I went to Tobey's.

Q. 17. 1875?

A. 1876; that is the fall of the Tilden campaign; that is the reason I remember it so well; I was there during the campaign, and came here to vote at Albany.

Q. 18. Were you around the mill in 1869 and 1870?

A. Oh, yes; I was around there every year from the time I was big enough to go anywhere; I drove cattle for Mr. Tobey when he was speculating; me and him were quite friends.

Q. 19. Was this a new or old mill in 1876?

A. This was the new mill—what we called the new mill; what we called the old mill was above the corners where Mr. Calkins made cider.

Q. 20. How many presses did he have in the old mill?

A. I don't know; there was one I know in one corner as you went in, and they used to use a horse with a sweep to grind apples.

146 Q. 21. You do not know whether he had more than one press or not?

A. I do not know whether he did or not.

Q. 22. Do you know whether the press he did have had more than one screw or not?

A. I think it had two screws.

Q. 23. What were they made of?

A. I don't know; my impression is they were wooden screws; I wouldn't swear positively.

Q. 24. Do you know whether he had any iron screws or not?

A. I don't know whether he had any in his possession or not.

Q. 25. Do you know whether he had any hollow iron screws or not?

A. No; I wouldn't swear; that is back of my recollection. I can remember the cider business and remember going there.

Q. 26. What sort of building was this mill?

A. I guess it was rigged over from a barn; rigged over into a cider mill—that is, the old mill was. I remember very well he bought a property of a banker and used to use that cellar for refining his cider.

Q. 27. Had the place been used as a cider mill before Tobey used it?

A. I think it had by Calkins.

Q. 28. Anybody else?

A. Not that I know of; might have been, but I wouldn't say.

Q. 29. Wasn't there a man by the name of Edwards making cider there?

A. I know Edwards, but I don't know whether he made cider there or not.

Q. 30. When did they stop making cider there?

A. I couldn't swear to the year, because I wasn't interested in it; it must be two or three years. Probably if I was going to state to anybody not under oath I should say two or three years or something like that.

Q. 31. How long had he used this iron hoop you speak of—these two iron hoops?

A. What do you mean?

Q. 32. That he laid up the cheese with?

A. I don't know.

Q. 33. How long have you seen it?

A. I wouldn't swear whether he had them there or got them made.

147 Q. 34. Don't know whether he had them in the old mill or not?

A. No.

Q. 35. You do not know what he did use in the old mill, do you?

A. Yes; he used straw.

Q. 36. What else?

A. Nothing that I know of.

Q. 37. Not a rack or form?

A. He had a rack of some form.

Q. 38. Didn't he use this iron hoop?

A. No; he used to lay it up and double the straw over in the ends.

Q. 39. You didn't see him make all the cheese?

A. No; I didn't see him make probably one one-hundredth part of them.

Q. 40. Do you remember how many cheese you did see him make in 1869?

A. I might not see him make an entire one in the whole time; I wouldn't swear I did; I remember seeing him laying them up and taking them off.

Q. 41. How about 1870?

A. I don't know about 1870; I couldn't name a year; I wouldn't attempt to, because I haven't no way of knowing about that. All that I know is the way I can place it is going from the old mill to the new one. I recollect his building the new mill, but couldn't state the year, except it was previous to 1876, because I went to work in it.

Q. 42. He might have used other things than you saw?

A. Oh, yes; it is possible.

Q. 43. He could have used a hoop and form and you not know it?

A. Yes, sir.

Q. 44. And could have used racks?

A. Yes, sir; might have used them two or three weeks I wasn't there.

Q. 45. And used cloths from 1869 up?

A. I couldn't swear that he didn't.

Q. 46. You couldn't swear he didn't use either of these three from 1869 up to 1876?

A. No; I couldn't swear positively.

ELI ROSE, being duly sworn in behalf of the complainant, testifies as follows:

148 Examined by Mr. WARD:

Q. 1. State your residence, name, and occupation.
A. Howe's Cave, N. Y.; 42; making lime and cement.
Q. 2. Are you the manager of the Howe's Cave Lime and Cement Co.?
A. Yes, sir.
Q. 3. Do you hire men and keep their time and accounts for the company?
A. Yes, sir.
Q. 4. Do you know Daniel Stevens?
A. I do.
Q. 5. Has he worked for your company more or less?
A He has.
Q. 6. When was your company formed?
A. 1867.
Q. 7. Will you state what months Mr. Stevens has worked for your company from 1870 to 1875?
A. Yes, sir; I can do that by referring to my books.
Q. 8. What books?
A. Time books.
Q. 9. How are they kept?
A. Monthly.
Q. 10. How is the time of the men set down?
A. It is set down each day, but I know I can't give you the particular dates by the time with what books I have with me; but I can give you the monthly aggregate of any month.
Q. 11. When were these aggregates made up?
A. At the close of every month.
Q. 12. Well, from the monthly aggregate, state——
A. What year do you wish to begin?
Q. 13. 1872.
A. Beginning with January?
Q. 14. Yes, sir.
A. Month of January, 21½ days; February, 5 days; March, 10½ days; April, 21¼ days; May, 22 days; June, 20½ days; July, 6½ days; August, nothing; September, nothing; October, nothing; November, nothing; December, 20¾.
Q. 15. Take the year 1873.
A. January, 19; February, 14; March, 14¾; April, 30¼; May, 26¼; June, 25¾; July, 20¾; August, 18¾; September, nothing; October, 4½; November, 21; December, 29½.
Q. 16. How many days in 1874?
A. January, 22; February, 15; March, nothing; April, nothing; May, nothing; June, nothing; July, nothing; August, noth-
149 ing; September, nothing; October, nothing; November, nothing, and December, nothing.

Cross-examination by Mr. KING:

Q. 17. In whose handwriting are those books?

A. Mine.

Q. 18. From what do you make those?

A. The first few years we had a smaller book we copied the daily record from, but every month the aggregate days were made up, and the wages list opposite figured up.

Q. 19. This is taken from another book?

A. Yes, sir; this one is.

Q. 20. In whose handwriting were these other books from which the memorandum was taken?

A. Mine.

Q. 21. Were you present every day in the year of 1872, taking the time of the men for this company?

A. I can't say that I was every day.

Q. 22. Then the whole memorandum contained in those books is not in your handwriting?

A. Yes, sir; all the writing is done by me.

Q. 23. Then you have to rely upon the statement of other people in order to get your memorandum?

A. Days that I was away, to some extent; yes, sir.

Q. 24. How many days have you in the month of April?

A. Thirty.

Q. 25. How is it you make thirty and a quarter in the month of April, 1873?

A. He might have made some extra time, which is frequently the case.

Q. 26. What is a man's days?

A. Ten hours.

Q. 27. Do you work nights and days?

A. Sometimes; not often; sometimes work Sunday.

Q. 28. Then some of these days Stevens has worked, according to your statement, has been on Sundays and at nights?

A. Probably.

Q. 29. Can you form any idea as to how many months on Sundays he has worked during the years 1872, 1873, or 1874?

A. No, sir.

Q. 30. Can you tell the days of the week and the days of
150 the month he worked?

A. I can't from this book; no, sir.

Q. 31. When he wasn't working for your company do you know where he was working?

A. I couldn't tell.

Redirect examination by Mr. WARD:

Q. 32. How many days make a fair month's work?

Objected to as improper.

Question waived.

PETER B. KROMER, being duly sworn for complainant, testifies as follows:

Examined by Mr. WARD:

Q. 1. Where do you reside?
A. Barnerville, Schoharie county.
Q. 2. Do you know George Casper?
A. I do.
Q. 3. Do you remember of having a conversation with him some time in the spring of 1880 in reference to an alleged infringement on racks and cloths in making cider?
A. I do; either in the spring or early part of the summer.
Q. 4. Please state that conversation—the substance of it.

Objected to on the ground that it is a conversation with a non-interested party.

Q. 5. Go on and give the substance of that conversation.
A. I saw Mr. Casper on his saw-mill; he had sent for me.

Mr. KING: I desire to ask the witness what his business is, for the purpose of making an objection.
Mr. WARD: Very well; go ahead.
The WITNESS: I am a lawyer by education and profession, although not in the active practice of law.

By Mr. KING:

Q. 6. Were you in the active practice of law in the spring of 1880?
A. No, sir.
Q. 7. Was this conversation you were about to detail a conversation between attorney and client?
[A.] I should think it was not.
151 Q. 8. I don't ask you what you think; I ask you for facts.

Objected to as immaterial and indefinite; it is a matter of law for the court to decide from all the circumstances whether or not the relation of attorney and client exists; and, furthermoore, Mr. Casper having detailed this conversation complainants are at liberty to have their version of the other party to it.

The WITNESS: What is the question?

Q. 9. Question repeated.
A. No, sir.
Q. 10. That is a fact?
A. I swear to that.
Q. 11. Not an inference or a conclusion?
A. I know what constitutes the relation as I understand it.
Q. 12. Were you sought to express an opinion as an attorney in this conversation?
A. I was.

Mr. KING: I object to this witness testifying in any manner to any conversation had between attorney and client, the attorney being the present witness and the client George Casper.

By Mr. WARD:

Q. 13. Did Casper pay you any fees?
A. No, sir.
Q. 14. Offer you any?
A. No, sir.
Q. 15. Ask you what your charges were?
A. No, sir.
[Q.] 16. Whereabouts was the conversation?
A. In his saw-mill.
Q. 17. Where abouts is his saw-mill?
[A.] About a mile from Howe's Cave, at Bramenville.
Q. 18. What situation in the saw-mill?
[A.] On the right-hand side as you come from Howe's Cave west.
Q. 19. While you were there?
A. Sitting on the carriage-way that carries the logs.
Q. 20. Go on and give the substance of the conversation.
A. He told me that he received the letter——

Mr. KING: You are going to detail this under objection and as destroying the secrecy between attorney and client after being warned not to.

The WITNESS: I don't think it existed; he said he had re-
152 ceived a letter from an attorney at Albany asking for a royalty on some slats he used in pressing cider; he said that he had used them (the slats) in his manufacture there, commencing in 1874; he told me that the patent that the attorney represented was obtained in 1876; that is the substance of what he told me.

Q. 21. What did you tell him?

Same objection.

A. I told him that the patentees having two years' play, he would probably have to pay; that he had better write to the attorney that as soon as he investigated and found things all right he would pay. In the meantime I advised him to send to Washington—to the Patent Office—and get a copy of the patent the attorney was acting under, so that he would know what the patent covered.

Q. 22. You say you were not at this time in the active discharge of your profession?
A. No, sir.
Q. 23. And are not now?
A. Not now; no, sir.
Q. 24. Are you a neighbor of Mr. Casper?
A. I live about a mile and a half from him.
Q. 25. How long have you been acquainted with him?
A. Ten or twelve years.

Cross-examination by Mr. KING:

Q. 26. How did you come to go to this saw-mill of Casper's?
A. He sent for me.
Q. 27. By letter?
A. No.

Q. 28. What was the message he sent to you?
A. His son-in-law told me Casper wanted to see me.
Q. 29. State what the business was he wanted to see you about.
A. No, sir.
Q. 30. Whether he wanted to get your advice?
A. Going to the cave I called at the saw-mill.
Q. 31. Had he ever consulted you on matters before?
A. Never before or since.
Q. 32. What was your opinion at the time you went there as to what he desired to have you to do?
A. I haven't the slightest idea.
Q. 33. Was it to see you as a lawyer? Did you think that?
A. No.
153 Q. 34. You had no perception as to what object he had in view in having you call upon him?
A. I supposed he wanted to ask my advice.
Q. 35. Is it customary for you to give advice in the country for nothing?
[A.] Oh, yes; any quantity of it; cart-loads of it.
Q. 36. Is that part of the business of the profession?
A. It seems to them it is my business to do it. I don't think it is part of the profession.
Q. 37. People consider the advice not worth much, or is it a chronic habit?
A. I suppose it is a chronic habit.
Q. 38. You anticipated this was a precursor of a job?
A. No, sir.
Q. 39. Was this advice merely friendly advice?
A. Friendly advice, as I give every day to anybody.
Q. 40. Not as a lawyer?
A. I have retired.
Q. 41. Have you been taking any fees for practice?
A. Once in awhile I do.
Q. 42. During this time?
A. I have once in awhile.
Q. 43. Have you an office?
A. No.
Q. 44. Have you an office in the house?
A. No, sir.
Q. 45. Had at this time?
A. No, sir.
Q. 46. Weren't you conducting any suits at this time?
A. I think I was—one.
Q. 47. You were getting some pay for that?
A. No, sir; not a bit; it was for my sister-in-law.
Q. 48. Have you had any business relations to patents—ever had any patent suits?
A. Yes, sir.
Q. 49. How much experience have you had in that particular—how many suits had you ever tried at this time?

A. I have been engaged in two cases of interference and engaged now in a case of royalty.

Q. 50. You are practicing law still?

A. In a measure, in that specialty.

Q. [51.] You were practicing, in a measure, at this particular time?

A. If you call that practice, call it so.

Q. 52. It is your custom, as I understand—has been ever since you were first admitted—to give gratuitous advice to questions propounded to you as attorney?

154 Objected to.

A. I haven't sworn to that; not ever since I was admitted; since I retired; living in the country with my father I changed that.

Q. 53. How long ago did you retire?

A. 1871.

Q. 54. Since 1871 you have practiced law gratuitously?

A. I have given advice gratuitously.

Q. 55. Yet you think the advice you have given gratuitously is good advice?

A. That is asking for a conclusion; I can't answer that.

Q. 56. You wouldn't give advice other than what you thought was good?

A. That is asking the same question.

Q. 57. What is your answer?

Objected to as immaterial and irrelevant.

Q. 58. Casper asked you these questions and desired an opinion from you as attorney?

A. I don't know; I suppose so; if I had not been somewhat conversant in patent law I don't suppose he would have asked me.

Q. 59. How many suits have you had?

A. Only two.

Q. 60. When were you admitted?

A. In 1859.

Q. 61. How many patent suits have you had since 1859?

A. I have sworn to that once.

Q. 62. One suit that you have now and two infringement suits?

A. That is all; that is enough—as much as I want.

Q. 63. What was the interference suit on?

A. Bale ties.

Q. 64. Did you go through the whole proceeding until final judgment?

A. One case was settled and the other went through to the Commissioner.

Q. 65. How far have you progressed in this patent suit you have now?

A. It is in court taking testimony as against us; that isn't through yet.

Q. 66. When did this suit commence?

A. Some time in June.

Q. 67. June of last year?
A. Yes.

Adjourned to Saturday, October 28, 1882.

155 *Continuation of Complainant's Testimony in Rebuttal.*

United States Circuit Court, Northern District of New York.

THE CLARK POMACE HOLDER COMPANY
vs.
WILLIAM H. FERGUSON.

PETER BREWSTER, being duly sworn in behalf of the complainants, testified as follows:

Examined by Mr. WARD:

Q. State your age, residence, and occupation.
A. I will be fifty-seven years old the 19th of December; I live in Charlton village, Saratoga county; keep a hotel there.
Q. Did you keep a hotel there from the years 1869 to 1874, inclusive?
A. 1870 I think I went in the hotel.
Q. 1870 you commenced?
A. Yes, sir.
Q. Have kept hotel there since that time?
A. Yes, with the exception of three years; the last three years up to the first of April last I was out of the hotel; I rented it; went back again this spring.
Q. Did you know George C. Valentine?
A. Yes, sir.
Q. You knew him during those years, 1870 to 1876?
A. I didn't know much of him in 1870; I knew him better after that; after I had been in the hotel I got acquainted with him; I knew him in 1870—I think the first year I went there.
Q. How far does he reside from your hotel?
A. About one mile or a mile and a half—hold on, let me see—I should think it was near two miles.
Q. Do you hear the rumors and reports of the neighborhood talked over in your bar-room?
A. Oh, considerable.

Objected to as immaterial and irrelevant and indefinite.

156 Q. I will change the form of the question; did you hear any rumor or report that George C. Valentine was using racks and cloths in making cider in his mill during the year 1872 or 1873?
A. In 1874 and 1875 I heard of his using them.
Q. You didn't hear any such rumors in 1872 or 1873?
A. No, sir; I think not.
Q. But you did hear such rumors in 1875 and 1876?
A. In 1874 and 1875.
Q. Did you hear considerable said about his using racks and cloths in making cider at that time?

A. Yes. I heard about his using them and I heard about Seeley using them—Seeley, of Burnt Hills; I think that is his name; keeps a cider mill there; I am quite certain his name was Seeley. I heard that talked in the bar-room.

Q. You say you heard considerable talk about their using it?

A. There was considerable talk about using it.

Cross-examination by Mr. KING:

Q. You might have heard the same thing about Valentine prior to 1874?

A. No; I don't think I did.

Q. You were not in the hotel all the time?

A. Not all the time.

Q. There might have been several conversations in your hotel when you were not present?

A. Yes, sir.

Q. When did you hear Seeley used them?

A. About the time that I heard Valentine used them.

Q. There might have been some rumors there prior to 1874 that you didn't hear?

A. Might have been.

Redirect examination:

Q. Was this talked of in 1874 as a new improvement—new thing?

Objected to as not in the line of a redirect examination.

A. Yes; it was a new thing to me. I had never heard of it before, and it excited my curiosity to ask a little something about it, and I asked questions about it; asked them how they used it, and so on.

Q. It was talked among the people in your presence a new thing—that was, newly introduced?

157 A. Yes; it was a new arrangement in making cider; they talked it over there; it was talked over by different ones.

ISAAC GROVESTEEN, being duly sworn in behalf of the complainants, testified as follows:

Examined by Mr. WARD:

Q. State your age, residence, and occupation.

A. Age, 26 last July; Charlton; little of everything; work by the day; farm it mostly.

Q. That is your business—farming?

A. That is my business now.

Q. Where did you reside between the years 1870 and 1874?

A. In the summer I worked to Henry Tibbitts, in 1874.

Q. Where is that?

A. About a mile and a half or two miles north of Burnt Hills—little northwest.

Q. How near Charlton?

A. Four miles.

Q. How near George C. Valentine?

A. I should think it was pretty near half-way between the two—between Charlton and the Burnt Hills.

Q. How near did you live to George C. Valentine?

A. When I was to home or when I was to work?

Q. When you were home.

Mr. KING: When you were to Tibbitts'?

A. I should think about two miles.

Q. How near to George C. Valentine's did you live when you were home?

A. About three-quarters of a mile.

Q. Are you a married man?

A. Yes, sir.

Q. And keep house?

A. Yes, sir.

Q. How far did you live from George C. Valentine's in 1872 and 1873?

A. It was about two miles in 1874, and I think it was about three-quarters of a mile in 1873 and 1872; I think I was home then.

Q. How near in 1872?

A. About the same distance.

Q. About three-quarters of a mile?

A. Yes, sir.

158 Q. When did you first hear of George C. Valentine using racks and cloths in making cider?

A. It was after I came from Tibbitts', in 1874.

Q. Did you then hear it talked of as a new thing in that vicinity?

A. Yes, sir.

Cross-examination by Mr. KING:

Q. Were you home all the time in 1872 and 1873?

A. I can't tell you; I was off by the day, I think, that year.

Q. Do you recollect who you worked for?

A. Worked for different ones all over.

Q. How far?

A. Sometimes I would work a mile, perhaps, and sometimes nearer to the neighbors.

Q. What would you be doing during that time?

A. Farming.

Q. You had no occasion to go to Valentine's?

A. No, sir.

Q. Did you ever go to Valentine's in 1872 and 1873?

A. I don't think I did go; I don't remember whether I did or not.

Q. Did you ever go there in 1874?

A. I don't know as I did; only just passed the house by the road.

Q. Don't remember being in his cider mill either in 1872, 1873, or 1874?

A. No, sir; I do not.

Q. You had no special occasion to hear any reports as to what the neighbors were doing?

A. No, sir; only as I sat around the store and heard them talking.
Q. You heard this in the store?
A. Yes, sir.
Q. Never heard Valentine say anything about it?
A. No; I don't remember hearing him.

Redirect examination:

Q. Do you know Abram Witbeck?
A. I knew him by sight.
Q. Where is he now?
A. I heard he was dead; that is general report.
Q. Did you know Walter Van Vorst?

Objected to as new matter and not matter brought out on the cross-examination.

159 A. Yes, sir.
Q. Did he work for Valentine?
A. Yes, sir.
Q. About that time?
A. Somewhere about that time.
Q. Where is he now?
A. He is dead, according to general report.

WILLIAM H. Low, being duly sworn in behalf of the complainants, testified as follows:

Examined by Mr. WARD:

Q. 1. What is your name, age, and occupation, and where is your residence?

A. William H. Low; am 59 years old; am a solicitor of patents and a consulting and constructing engineer, and I reside at No. 100 Jay street, Albany, N. Y.

Q. 2. State what opportunities and advantages you have had for investigating, analyzing, and determining the nature and character of different inventions, patented and unpatented, relating to mechanics and other arts and sciences.

A. I have always had a natural taste for such things, and from my earliest recollection have felt a deep interest in any and all kinds of inventions, and, in fact, may say I have made the subject of mechanics the study of my life. It has been my ambition to obtain knowledge pertaining to that subject, and when I have found anything new in mechanical structures my first efforts have always been directed to an analysis of its principles and modes of operation. In 1856 I began the business of soliciting patents for inventions, and since that time I have, with but little intermission, made it a part of my business. This occupation has brought me into frequent contact with inventors and others closely connected with and interested in inventions, and has afforded me abundant opportunities for studying different inventions and for analyzing them for the

purpose of discovering either differences or similitudes in respect to other inventions in a like or similar class.

Q. 3. Have you examined the drawings and specifications
160 of letters patent of the United States, No. 187,100, granted to John Clark, of Pontiac, Michigan, on the 6th day of February, 1877, for improvement in cheese formers for cider presses?

A. I have.

Q. 4. Have you examined Plaintiff's Exhibit No. 9, known as the "Clark model," and compared it with the invention shown and described in letters patent No. 187,100? If so, state whether, in your opinion, a skilled mechanic versed in the art to which the invention appertains, after reading the said patent, would be likely to construct a "guide-frame" or cheese former like the model, Plaintiff's Exhibit No. 9, with its four vertical sides closed, or would he construct it with two of its opposite sides open, as shown in Defendant's Exhibit No. 4, of January 12, 1882?

Objected to as not rebuttal.

A. I have made such an examination and comparison, and have no doubt that an intelligent mechanic, skilled in the art of constructing machines and apparatus for the manufacture of cider, would make the "guide-frame" described and shown in patent No. 187,100 like the model Plaintiff's Exhibit No. 9, instead of the model Defendant's Exhibit No. 4; and, though the drawing and specification are somewhat vague and indefinite, I will state my reasons for arriving at a conclusion that the "guide-frame" referred to is constructed with four side pieces, or girts, instead of two of said side pieces: First, because the specification, in describing the mode of forming the cheese of pomace, says: "A cloth (E) large enough to envelop the layer of pomace is then laid on the rack, inside the frame, and opened out to receive the pomace, which is 'struck' level with the girts of the frame;" and, further on, it says: "Laid up in this way the several layers are uniform in thickness, and the cheese, in mass, is level on top and offers a uniform resistance to the pressure over its entire area." In the foregoing quotation from the specifications the word "struck" refers to the operation of "striking," or leveling off, any granulous or other incoherent substance or material contained in any fixed
161 or rigid boundaries; the operation of "striking" consists in removing any excess of the contained substance that lies above the upper edge of the receptacle by means of a "straight-edge," or what is technically known as a "strike;" and this operation could not be performed so as to produce a layer of "uniform thickness" while the substance to be "struck" was contained in any construction having two of its opposite (vertical) sides left open, for the reason that in moving the "strike" toward either of the open sides—which course of movement would then be a necessity—there would be nothing at those points to resist the movement and retain the substance in place, and, as a consequence, it would be forced out through the open sides and form at those points a bed of unequal thickness. Second, because in Fig. 1 of the drawing clear space is left between the uprights of the press-frame and the "rack C" and the adjacent

edges of the enveloped cheese of pomace. This, in my opinion, clearly indicates that the spaces have been formed by the "girts" forming those sides of the "guide frame."

Q. 5. Have you had any experience as a draughtsman; and, if so, to what extent have you practiced that art?

A. As a constructing engineer I have made many drawings of machinery that has been built under my direction and supervision; these drawings have numbered many hundreds. I have had access to and become familiar with the drawings of many other engineers, and have no difficulty in understanding a drawing prepared by a good draughtsman who exercises ordinary care.

Q. 6. Have you examined the drawing attached to patent No. 187,100; and, if so, is it defective, and in what particular?

A. I have made such examination and found it somewhat defective, and I would here state it is a fault common to many draughtsmen that they are apt to omit lines where they should properly be inserted, and to insert lines where they should be omitted; and, in my opinion, the drawing accompanying Clark's patent No. 187,100 was made by a careless draughtsman; and I think, from the reading of the specification, that he has in-

162 serted the full outlines of the press upright, immediately above the upper "rack C," in Fig. 2, where they should have only been dotted, and I know that he has omitted to draw dotted lines through the bed B, rack C, pomace cheese, and the piece resting on the top of the "guide-frame," where they should have been inserted to indicate the right-hand edge of the press upright where it stands behind the parts above named, and this omission is made more apparent by the fact that he has properly dotted the outline of the left-hand edge of said upright through the parts named.

Q. 7. Have you examined the alterations to Fig. 1 of the drawing attached to an uncertified copy of patent No. 187,100, made in red lines by Mr. Selkirk and identified as Defendant's Exhibit No. 1, of January 12, 1882? If so, state whether, in your opinion, the construction shown by such red-line alterations *are* justified by the description contained in the specification of the patent or by anything formed in Fig. 2 of the drawing.

A. I have made the examination referred to in the last question and find that the red-line alterations to Fig. 1 of the drawing therein referred to are in several respects unwarranted by anything contained either in the specification or drawing of patent No. 187,100.

Q. 8. Will you enumerate the parts drawn in red lines in Defendant's Exhibit No. 1, of January 12, 1882, wherein you find the alterations to the drawing unwarranted?

A. Beginning with the part marked with a red line, W, in Fig. 1 of the altered drawing, the said part represents a cross-bar or beam that is extended to meet the two uprights of the press frame, while in Fig. 2 of the unaltered drawing there is nothing to indicate that the corresponding part shown in the section has any definite length. The drawing in that part of Fig. 2 would as correctly represent a piece of any indefinite dimensions beyond the sectional line, or of a piece only thick enough to be cut by a sectional line. By the rules

of drawing, any part, howsoever thin, that can be cut by a sectional line may be properly shown by the diagonal section lines contained in that part of Fig. 2, and consequently any dimensions
163 that may be given to such a part, without further data, is a gratuitous and unwarranted assumption on the part of any person supplying such lacking dimensions.

The part marked with a red line, Y, represents a beam, whose width is greater than its depth, resting on the upper edges of two opposite side pieces or "girts" of the "guide-frame." The width given to that piece in the red-line alterations is unwarranted by any data contained in the unaltered drawing or in the specifications. The corresponding piece shown in section in Fig. 2 could, with equal propriety, be shown as having a thickness (or width) of one-hundredth part of an inch less, if the dimensions would admit of the piece being cut by a sectional line.

The pieces marked in red letter (V) have, for the reasons before given in this answer, widths given to them for which there is no warrant in the unaltered drawing and specification.

Q. 10. Will the same criticisms apply with equal force to the drawings shown in Defendant's Exhibit- Nos. 2 and 3 of January 12, 1882?

A. Yes, sir.

Q. 11. In your answer to question six you state that "it is a fault common to many draughtsmen that they are apt to omit lines where they should be properly inserted and to insert lines where they should be omitted." Please state whether you have found such mistakes in the drawings shown in Defendant's Exhibit- Nos. 1, 2, and 3 of January 12, 1882; and, if so, what do those mistakes consist in?

A. In Defendant's Exhibit- Nos. 1, 2, and 3 of January 12, 1882, I have discovered a number of mistakes of the nature referred to in my answer to question six, and will specify those mistakes as follows:

In Exhibit No. 1 the red outlines in Fig. 1 representing the width and depth of the pieces marked in red letter R are all drawn in dotted lines, whereas the parts of said pieces that are not hidden by the forelying parts should properly have their outlines shown by full lines.

In the same figure the dotted outlines of the piece (R) on the left side of the "guide-frame" are not all carried back to their
164 proper points; the line representing the furthermost edge of the said piece (R) terminates at the front side of the piece marked W, whereas the said line should be dotted into the last-named piece, so as to represent the said piece (R) as being properly connected with the rearmost girt (Z). In addition to the defects named the parts marked W and Z in the upper position of Fig. 1—in the upper portion of Fig. 1—in the upper portion of the drawing are so blurred and indefinite as to be not clearly distinguishable.

In Exhibit No. 2 the outlines of the piece (R) at the right side of the "guide-frame" should be dotted through the upright on the right side of the press-frame, but in the drawing the said dotted line is omitted. Besides this the dotted outline representing the further-

most edge of the piece R, at the left side of the "guide-frame," is extended beyond the point where it should properly terminate, and the outline for the furthermost edge of the bed of the press is omitted.

In Exhibit No. 3, the outline representing the furthermost edge of the piece R, at the left side of the "guide-frame," is extended beyond the point where it should properly terminate.

Q. 12. Is the combination of elements that is claimed in Clark's patent No. 187,100, in your opinion, an operative combination wherein there is co-operation of the several parts to produce final result, or is it simply an aggregation of parts in which there is no co-action of the separate elements?

A. The combination claimed in patent No. 187,100 is, in my opinion, an operative combination, wherein there is co-operation of the several parts to produce a unitary result, and it differs from an aggregation of separate elements, wherein each element performs its own function unchanged and unaffected by the others.

Q. 13. Please describe the functions of each of the elements of the combination claimed in patent No. 187,100 and the manner in which these several functions co-operate.

Objected to as not in rebuttal.

165 A. The "extended pomace rack" forms a base for holding the "guide-frame" while the cheese of pomace is being formed in said frame, and its extension affords a support to the outer edges of the cheese, when, by reason of the applied pressure, the cheese is expanded sidewise in each direction beyond the size in which it was moulded by the "guide-frame;" the "guide-frame" holds the "cloth" in such manner that the cheeses will be formed of a uniform size, and it regulates and determines the position of the cheese so that each one in a series of cheeses will lie directly over another and thereby produce an equal distribution of the pressure when the mass is subjected to the action of the cider press; and the enveloping cloth is dependent upon the "guide-frame" and rack to sustain it while being filled with the pomace, and upon the extended portion of the rack to maintain it in an uninjured condition while it is being expanded sidewise by the applied pressure; and it further depends upon the rack to effect a more perfect drainage for the cider after it oozes out through the pores of the cloth.

Q. 14. If, instead of open racks, "scale-boards" or platforms composed of smooth boards closely joined and secured together side by should be used between the layers of pomace, would such device perform the same function that the racks would; and, if not, why not?

Objected to as not rebuttal.

A. Such scale-boards or platforms would not perform the same function that the racks would for the reason that such "scale-boards" being imperforate the only outlet for the drainage of the cider would be through the pores of the cloth around the perimeter of the cheese; the close contact of the smooth platforms with the upper and lower

surfaces of the cheese would prevent any drainage from those surfaces.

Q. 15. Would loose slats laid side by side between the layers of the pomace perform the same functions that extended racks do; and, if not, why not?

Same objection.

166 A. Loose slats laid in the same manner specified in the last question would not perform the same functions that the extended racks do, for the reason that they could not be placed to extend beyond the cheese at all four of its sides, and consequently where they were used two sides of an expanded cheese would be left without any support from the slats.

Q. 16. Do racks that are used inside of cribs to separate the layers of pomace perform the same functions that the extended racks shown and described in patent No. 187,100 do?

Objected to as not rebuttal.

A. Racks placed inside of cribs do not perform the same functions that are performed by the extended racks referred to, for the reason that they are not used for supporting a guide-frame while the cheese is being formed, and, as such racks have to be made smaller than the inner dimensions of the crib, so as to facilitate its introduction into and removal from the crib, they do not support the extreme outer sides of the cheese.

Q. 17. Have you examined the model—Defendant's Exhibit No. 4—of January 12, 1882, and compared it with the drawings—Defendant's Exhibits Nos. 1, 2, and 3—of January 12, 1882? If so, state whether said model correctly represents the device shown in said drawings.

A. I have made such an examination and comparison, and find that the model—Defendant's Exhibit No. 4—of January 12, 1882, is not made in accordance with the drawings of Defendant's Exhibits Nos. 1, 2, and 3.

Q. 18. Have you recently made a search in the Patent Office at Washington for the model filed with the application on which patent No. 187,100 was granted to John Clark, of Pontiac, Mich., on the 6th day of February, 1877? If so, what was the result of the search?

Objected to as not rebuttal.

A. On the fourth day of the current month I made such a search in the United States Patent Office at Washington, D. C., by examining the models in the case devoted to models of machines for the manufacture of cider. After examining such models as were
167 there in the case I was informed by the person in charge of the case in which such models were contained that the Clark model, for which I was searching, was destroyed by the fire that occurred at the Patent Office on the 24th of September, 1877. Consequently I was unable to find it.

Q. 19. With the extended rack and the enveloped cheese pomace,

described in patent No. 187,100, does the operation differ from that of a rack and enveloped cheese when used in combination with a crib formed of vertical slats with intervening spaces; and, if so, in what respect?

Same objection.

A. There is a difference in the operation when the racks are used in such a crib, as the cheese expands by the applied pressure; the slack cloth around the edges will permit the cheese to bulge out into the openings between the vertical bars; and then, as the racks and cheese move downward under the effect of the applied pressure, the cloths are liable to become worn and torn; besides this, the slack of the enveloping cloths, caused by the reduction in the thickness of the cheese, will, by the downward movement of the cheeses, be carried into the clearances between the edges of the racks and the sides of the crib, and then, by reason of the cloths being doubled in the clearances referred to, these folds of cloth will impede the drainage of the cider. With the rack extended beyond the edges of the cheese these actions are not liable to occur.

Cross-examination by Mr. KING:

Q. 20. Please examine Plaintiff's Exhibit No. 9 and letters patent 187,100, dated February 6, 1877, granted to John Clark for an improvement in cheese form of cider press and see whether the Exhibit No. 9 corresponds to the drawing upon the copy letters patent?

A. That is not correct—not according to the drawing; there is lacking in this model as it is arranged now the upper rack.

Q. 21. That is Exhibit No. 9 (putting another rack in)?

A. I would say now if the cloth was filled with pomace, as
168 represented in this drawing, I think it does correctly represent, taken in connection with the specification.

Q. 22. Is there anything to indicate in those drawings the formation of the form marked "F?"

A. There is nothing in the drawing considered in itself to indicate it.

Q. 23. Look at Defendant's Exhibit No. 21, of January 12, 1882, under figure 2, and state whether this is a space between the uprights marked "Z Z" and upon the line "Z P P Z," or whether it would represent a solid piece of material of any description?

Objected to on the ground it has reference to Mr. Selkirk's drawing and lettering instead of the Clark patent.

A. It might probably represent either.

Q. 24. Is that the whole answer?

A. Yes.

Q. 25. From the specification, taken in connection with the drawing, what should it indicate?

A. In my opinion it indicates that there is a side girt there from the description of the operation in forming the cheese.

Q. 26. Is figure No. 2 of Defendant's Exhibit No. 1, of January 12,

1882, with the exception of the red lines and red letters, the same as figure No. 2 of letters patent 187,100, granted to John Clark for an improvement of cheese form in cider presses?

A. With the exception of the red lines and red letters it is the same.

Q. 27. Is Defendant's Exhibit No. 1, of January 12, 1872, an exact copy, with the exception of the red lines and red letters, of the patent last named, 187,100?

A. With the exception of the red lines and the red letters it is the drawing attached to that patent.

Q. 28. A space in drawing is usually designated in what way where a space is included between certain lines?

A. A space indicated?

Q. 29. Yes.

A. A space is indicated usually by the omission of anything.

Q. 30. Why would one read the drawing figure 2, in letters patent 187,100, by a board or a continuous piece of wood between the lines or upon the space just asked ("Z P P Z") in Defendant's Exhibit No. 1, of January 12, 1882?

A. One would read that way to make it appear consistent with the specifications of the patent.

169 Q. 31. Is it customary to dot the lines which are not seen, and which indicate that something was behind that which was concealed of wood or other structure in a drawing?

A. It is customary, but it is sometimes omitted by careless draughtsmen.

Q. 32. Are the lines indicating the upright in the center of Fig. 2, which I now designate, and which are marked "P P" in Defendant's Exhibit No. 1, of January 12, 1882, dotted or full lines?

A. They are full lines, but the draughtsman has also omitted to dot the outlines below that point.

Q. 33. The draughtsman has dotted the continuous line "P P" below the rack "C," has he not, in the drawing Fig. 2 of letters patent 187,100?

A. He has at one side of the upright, and omitted it at the other side.

Q. 34. Then, having made a dotted line of one part and a full line at the other, would it not indicate it was the intention of the draughtsman to make the line "P P" a full line in the space "Z P P Z?"

A. Not of necessity.

Q. 35. If it was the intention to have no space upon the line "Z P P Z," then the proper drawing would have been to have dotted the line "P P?"

A. If the drawing had been properly made, yes.

Q. 36. If it was the intention?

A. If it was the intention and the drawing was properly made, the line should have been dotted.

Q. 37. There is nothing in the patent by itself, a description of any sort, which would positively show that there was a complete

board, or any substance of any description, on the line "Z P P Z," is there?

A. Nothing beyond the mode of operation in forming the cheese of pomace.

Q. 38. Could not a pomace be laid up by Defendant's Exhibit No. 4, of January 12, 1882?

A. In my opinion, no, sir.

Q. 39. You have never been accustomed to laying up pomace, or putting up cheese in cider presses or any other press?

A. No, sir.

Q. 40. Then the statement you make—it could not be
170 done—is made from general observation and not experience?

A. From my knowledge of mechanics. I will modify that answer by saying they could not lay up a cheese and produce the effect stated in the specification.

Q. 41. It might possibly be made?

A. A cheese could be laid up of unequal thickness, but they couldn't lay up a cheese of equal thickness with a structure of that kind.

Q. 42. Drawings are absolutely necessary in making application to the United States Patent Commissioner for a patent upon any device, are they not?

Objected to as a matter of law.

A. They are.

Q. 43. And the drawings, in a measure, govern the office in considering the application, and are made a part of the letters patent?

A. Drawings are not always conclusive; they do measurably govern, especially under the old practice before March, 1881. When models were furnished the models themselves were taken into account, as well as the drawings, and in applying for reissues anything that was shown in the model could be introduced into a reissue.

Q. 44. Have or have not applications been denied because the drawings did not set forth the applications in accordance with the model itself?

A. Not to my knowledge; never in the course of my practice.

Q. 45. Have not drawings been rejected by the Patent Office because they did not develop the model itself?

A. Not to my knowledge.

Q. 46. What is intended by the dotted lines in "D"—the horizontal dotted line in "D" of Complainant's Exhibit Letters Patent 187,100, granted to John Clark?

A. There is nothing by which I am able to determine what that line means; nothing in the drawings or specifications. It might mean something attached to the frame, or it might mean something attached to the side of this piece here; I have no means of knowing that.

Q. 47. Might it not indicate that a strip of wood had been
171 nailed to the upright immediately between "C" and "D" and

near the extreme end of "C" and "D," the lower line of which strip was on a line parallel with the lower line "D?"

A. It might or it might not; there is nothing to determine the location, whether that means a strip or whether the whole frame is covered up.

Q. 48. If the specifications were not before you and the drawing there, what would you say as to that—that it indicated something beyond the line of "D" which was to be indicated by a dotted line?

A. It would indicate something was there, but what it would be I could not determine.

Q. 49. But something was behind that?

A. Something was behind that, and it might just as well represent something that was beyond the upright, beyond this upright of the press.

Q. 50. And beyond figure "D" as well?

A. And beyond the figure "D" as well; might be entirely outside of the press.

Q. 51. From all that is indicated in the two drawings, figure 1 and figure 2, "D" might be one solid piece of timber, might it not?

A. It might be a solid piece of timber and might be the follower of a press, or anything; might cover the whole space between the uprights of the press, or it might be simply the thickness of a sheet of paper, so long as it could be cut by a sectional line.

Q. 52. In making a pressure, in putting your cloths in and after taking off your form, don't the edges of the cloth "E" extend beyond the rack "C" when the pressure is applied?

A. I think not from the operation I have seen in this press.

Q. 53. Is there anything to indicate in these letters patent whether they extend beyond or do not extend beyond the edges of the rack "C" when pressure is applied?

A. Nothing to indicate it in the patent itself.

Q. 54. Then the edges of the cloth "E" may extend beyond the rack "C?"

A. When pressure is applied, it may, if the extension is not carried to a sufficient distance.

Q. 55. The use of the forms, then, is temporary only, and
172 that is to hold the cloth while the pomace is being filled?

A. And to form the cheese and to regulate position of the cheese in the mass.

Q. 56. After the form has been removed there is nothing there to support the cloth in any way so as to make it strictly conform to the forms which it occupied when the form was placed upon the rack?

A. Nothing only the drawing over the ends of the cloth on the cheese and the resistance produced by the cloths lying upon the pomace.

Q. 57. Is there anything in letters patent which would indicate how many racks or forms must be placed upon the lower structure or base and above it, the base "B" and above it, in order to make a cheese?

A. There is only one rack required to make a single cheese.

Q. 58. By the patent itself?

A. Yes; but it speaks of building them up in mass.

Q. 59. There is nothing to indicate how many ought to be built up?

A. No, sir; that is optional with those using the press.

Q. 60. The larger number of layers the greater pressure will be exerted upon the lower layer?

A. Not of necessity.

Q. 61. According to weight?

A. The only increase of pressure would be due to the weight, and that would be trifling in comparison with the pressure applied.

Q. 62. Then the cloth at the bottom would necessarily expand more or give way more than the cloths of the upper layers by reason of this additional weight?

A. I don't think the additional weight would produce any further extension; I don't think it is sufficient to produce an additional extension of the cloth latterly.

Q. 63. There must be more weight the larger number of layers there are.

A. Oh, yes; but I say the additional weight is insufficient to produce any perceptible extension of the lower layer beyond those of the upper layers.

Q. 64. There would be more extension, as matter of course, whether small or great?

A. I don't think the difference could be detected.

173 Q. 65. You have never measured any of these cheese after they were laid up?

A. No; it is simply a matter of opinion based upon my experience.

Q. 66. Wouldn't scale boards in which grooves had been cut answer the same purpose as a rack made of slats joined together?

A. Not entirely.

Q. 67. Why?

Objected to on the ground there is no scale board with grooves in offered in evidence, or any testimony given in reference to it.

A. It wouldn't produce the same effect, for the reason that with scale boards there would be no opening between the transverse cleats at the bottom; no chance for drainage under the scale boards as there is the rack.

Q. 68. Have you not seen racks, or what might be termed racks, scale boards with grooves cut lengthwise in them?

A. I never have.

Q. 69. In pressing any material?

Objected to as indefinite, irrelevant, and immaterial.

Q. 70. In answer to question 15 you stated, "Loose slats laid in the manner specified in the last question would not perform the same functions that the extended racks do." You had reference in your answer to that question merely to the fact that the slats must be laid one way, I presume. Am I correct?

A. Yes, sir.

Q. 71. If slats had been laid crossways of each other and extended beyond the rack or form it would have answered the same purpose as the rack now in question?

Objected to on the ground there is no evidence of slats being used in that way.

A. It would, with the single exception that it would fail to support the corners of the cheese—the four corners of the cheese; they couldn't be carried out so the slats would support the four corner of the cheese.

Q. 72. Wouldn't slats laid in the same manner as the slats are in Exhibit No. 9 of plaintiff and unfastened operate in the same manner that this rack now shown you, Exhibit No. 9, of plaintiff's would?

A. I don't think it would be possible to lay slats in that manner upon a layer of pomace.

174 Q. 73. If it could be shown it was practical, would it not operate in the same way?

A. If it could be shown it was practicable, yes; but the slats couldn't be laid out to the extreme edge of the cheese, and consequently at the corners where they extended as the cheese extended there would be no support in this notched corner.

Q. 74. Is there any notch at the corner of this?

A. No, but they would be so produced by loose slats.

Q. 75. If you laid four slats down on the base and put the slats on the upper part of this Exhibit No. 9, would they not operate as well if they were loose as if they were nailed together, as in this exhibit?

A. They couldn't be extended beyond the cheese pomace.

Q. 76. Why not?

A. Because there would be nothing to sustain them—the cheese pomace before it was compressed. There would be nothing to support these outer slats at the extreme edge of the cheese; nothing to hold them there; consequently they would have to be laid in from the edge, and if you were going to extend the slats out beyond the edge they would have to leave a notch at the corners.

Q. 77. Have you not already testified that — the patent itself the pomace must not be laid out to the edge of the rack?

A. No; I have not testified to that—that the pomace must be laid out to the edge of the rack. It won't be laid to the edge of the rack by the use of that form, but without the use of a form.

Q. 78. The loose slats made in the same manner of Plaintiff's Exhibit No. 9 would perform the same purpose in holding up the form?

A. Yes; would hold up the form, and as the cheese expanded it would extend over.

Q. 79. By the specifications contained in letters patent 187,100 and the model, Plaintiff's Exhibit No. 9, the pomace does not extend to the edge of the rack by reason of the form having been placed there to make a layer?

A. It does not extend there.

Q. 80. Please state the difference that you find between the Defendant's Exhibit No. 4, of January 12, 1882, and the drawing, Defendant's Exhibits Nos. 1, 2, and 3, of January 12, 1882.

175 A. In Defendant's Exhibit No. 1, 2, and 3 these pieces are represented as being placed on the upper edges of the girts; in the drawings they are represented so, while here they are let in flush; in Exhibit No. 2 there is a further difference of having a beam placed across here in the drawing in the centre; across these girts.

Q. 81. Those are the only differences you notice?

A. Those are the only differences I note.

Q. 82. Then the strict difference between this model, irrespective of the piece of board or wood (Y) in these figures, is that this side piece (Y) is placed upon and not flush with the upper edge of the side piece (Z)?

A. Yes, sir.

Q. 83. At whose request did you make an examination at the Patent Office for the model filed with the application upon which the letters patent 187,100 were based?

A. I didn't make it at anybody's request; it was after I was retained in this case and I wanted to satisfy myself if possible on the construction of the model; I was in Washington on other business and had a little spare time, and I went up there in the model room to make that examination for my own satisfaction.

Redirect examination:

Q. 84. In your answers what you have called a cheese you mean a single layer of the mass?

A. Certainly, sir.

Q. 85. Do I understand you to say that, since the models are no longer required at the Patent Office at Washington, patents have been rejected because of imperfect drawings?

A. Not to my knowledge.

Q. 86. Not even since the models are rejected?

A. No, sir. I would state that since they ordered not requiring models it has required a greater care in preparing drawings; it necessitates a greater care in preparing drawings because they have not models to refer to. I will modify the question to this extent, to say I have known of instances where an invention not having been understood from the drawing they required models to understand it properly.

Recess.

176 Afternoon session.

Counsel for complainant offered in evidence the illustrated catalogue of the Boomer & Boschert Press for 1873, Syracuse, N. Y., according to stipulation, especially page 37, two diagrams on the page, commencing with the article "Laying up the Cheese."

We favor the log-house crib illustrated by the above cut. It is made of good two-inch plank, five inches wide, of length suited to

the size of the press. The sticks or rails should be notched so as to leave them half an inch apart.

For our No. 2 press the crib should be four feet by five inside and have nine or ten rails on a side.

A number of racks are used (see Fig. 3), made of strips three-fourths inch thick by two inches wide, placed one-fourth inch apart. The outside strips should be one-fourth inches thick, beveled toward the inside to three-fourths inch. Strips one-half inch by three inches (beveled) are placed across each end and secured with copper nails. Sometimes a third piece is required across the middle. These racks should just fit the crib, and pressing cloths of the same size [should] be provided.

In laying up the cheese, first build up the crib five rails high, put a rack on the bottom and cover it with a cloth, and then put a cloth on each side of the crib to serve as lining; then put on a layer of pomace about five inches thick, then a cloth, and alternate with rack, cloth, pomace, cloth, *cloth*, etc., until the crib is filled, laying up the rails as it becomes necessary.

Marked "U. S. C. C., N. D. S. of N. Y. The Clark Pomace Holder Co. against William H. Ferguson. Complainant's Exhibit No. 12. October 28, 1882. J. M. R."

Also The Boomer and Boschert Press, published at Syracuse, N. Y., September, 1874, the same having been introduced by defendant heretofore.

Marked "U. S. C. C., N. D. S. N. Y. The Clark Pomace Holder Co. against William H. Ferguson. Complainant's Exhibit No. 13. October 28, 1882. J. M. R."

177 Also the circular entitled "Boomer and Boschert Cider and Wine Press." Manufactory and home office, Syracuse, N. Y. New York city office, No. 26 Beekman street. Marked "U. S. C. C., N. D. S. N. Y. The Clark Pomace Holder Co. against William H. Ferguson. Complainant's Exhibit No. 14, October 28, 1882. J. M. R."

Objected to on the ground there is no date on it to show when it was published.

Also the circular having on its title page "Boomer & Boschert Cider and Wine Press. Factory and home office, Syracuse, N. Y.; especially page 10, under the heading "Racks and Cloths:"

"The introduction of racks, forming artificial channels for the cider to escape, is of comparative recent date. The use of cloths in connection with the racks came still later, but is now well understood by most cider makers. This does away with the use of straw entirely, getting rid of much of the litter and uncleanness so often incident to a cider mill, also leaving the dry pomace in a better shape for handling, which may be done with a scoop shovel with the same facility as grain. The racks are made of basswood strips one-half inch thick by three-quarter inch wide, placed one-quarter inch apart, with a strip one-quarter inch wide nailed across each end. The forms should be made by nailing boards one inch thick and three and one-half or four inches wide together in the form of the sides

of a box. To stiffen and guide against, nail a board upon each end, as shown in the cut."

Counsel for complainant states he cannot find a catalogue for the year 1877 or 1879, but, if subsequently found, will be produced. Marked "U. S. C. C., N. D. S. N. Y. The Clark Pomace Holder Co. against William H. Ferguson. Complainant's Exhibit No. 15, October 28, 1882. J. M. R."

Also the circular with the title page, "Boome- & Boschert Cider and Wine Press. Factory and home office at Syracuse, N. Y. 1878; especially on page 10, commencing in the centre of the page, under the heading of "Patent Covering the Right to Use Racks and Cloths."

178 Objected to as immaterial and irrelevant, and proving something since the date of the alleged patent itself.

"We have, for two years past, recommended and sold with our presses the improved method of manufacturing by racks and cloths. Last fall we were served with a notice by Mr. John Clark, of Pontiac, Mich., that he had obtained a patent upon this rack and cloth system.

"Believing this to be a very important improvement in the manufacture of cider, and after a thorough investigation as to the validity of his patent, we have made arrangements by which we are to continue to furnish them with our press and protect our customers in their use. And although we are compelled to pay a royalty for every press sold yet we have concluded to make no additional charge for our press, which carries with it this right.

"We have also arranged with the owners of the patent that all presses heretofore manufactured by us shall be allowed to use such patent without molestation or payment of royalty from and after this date.

"Therefore, every press, or set of press-irons, sold by the Boomer & Boschert Press Co. carries with it the right to use the Clark patent."

Copy of notice from patentee, recently issued:

"All parties using, without authority, the system of manufacturing cider with racks and cloths, as patented by me March 3d, 1874, and Feb. 6th, 1877, which patent covers both the stiff and pliable rack, are hereby warned that these patents will be rigidly maintained. This does not apply to those using presses manufactured by the Boomer & Boschert Co. of Syracuse, N. Y.; that company, having settled for the past, now pay royalty on all presses sent out.

"JOHN CLARK,
"*Pontiac, Mich.*

"Licenses may be obtained by addressing C. G. Hampton, Detroit, Mich."

Further objected to on the ground it is not rebuttal.

Marked "U. S. C. C., N. D. S. N. Y. The Clark Pomace Holder Co. against William H. Ferguson. Complainant's Exhibit No. 16, October 28, 1882. J. M. R."

179 Also circular having on the title page "Boomer & Boschert Press Co.'s Cider and Wine Press. Factory and home office at Syracuse, N. Y. 1880."

Same objection, and as irrelevant, immaterial, and not rebuttal.

Marked "U. S. C. C., N. D. S. N. Y. The Clark Pomace Holder Co. against William H. Furguson. Complainant's Exhibit No. 17, October 28, 1882. J. M. R."

Also circular entitled "The Boomer & Boschert Cider and Wine Press. Factory and home office at Syracuse, N. Y. 1881."

Same objection.

Marked "U. S. C. C., N. D. S. N. Y. The Clark Pomace Holder Co. against William H. Furguson. Complainant's Exhibit No. 18, October 28, 1882. J. M. R."

Also the circular entitled "The Boomer & Boschert Cider and Wine Press. Factory and home office of the Boomer & Boschert Press Co., Syracuse N. Y. 1882."

Same objection.

Marked "U. S. C. C., N. D. S. N. Y. The Clark Pomace Holder Co. against William H. Furguson. Complainant's Exhibit No. 19, October 28, 1882. J. M. R."

Counsel for the complainant states that he will identify these exhibits as the annual circulars of the Boomer & Boschert Press Co. hereafter.

BENJAMIN H. KNAPP, being duly sworn in behalf of the complainant, testified as follows:

Examined by Mr. WARD:

Q. 1. State you age, residence, and occupation.

A. I am sixty years old the 5th day of last February; I reside in Charlton village, Saratoga county; occupation, butchering, cultivating some land, and practicing in justices' court; formerly was a wagon maker.

Q. 2. How far do you reside from George C. Valentine?

A. I should think it was less than two miles.

Q. 3. How long have you known George C. Valentine?

180 A. I can't say as to that. I moved there thirty-three years ago last spring; I moved there in 1849, and the family was living on the Valentine place, and there was a family of children there; I guess he was born there. I have known him ever since a child. There was quite a family of them.

Q. 4. Did you have a conversation with Mr. Valentine a short time ago in reference to his using racks and cloths of an alleged infringement on a patent?

A. I had a conversation with him last——

Mr. KING: Fall of 1881?

A. Yes, sir.

Q. 5. State the substance of the conversation in reference to racks and cloths.

A. I stopped in his mill and he was laying up a cheese——

Defendant's counsel moved to strike out the testimony as irrelevant and not responsive to the question.

The WITNESS: He said he was using racks and cloths and used them for some time, and they were around and claimed a royalty. There was law about it, as I understood. He said he had used the cloths; said he had used them some time.

Mr. KING: Use the words he used.

A. I will give it as near as I can. I may not give it word for word, but I will give the substance.

Mr. KING: You are testifying to certain things, and I want you to testify to them correctly.

The WITNESS: He said he had used it some time in this present shape. He experimented two or three years with loose slats and one thing and another before he perfected that, and he had been using that some time.

Q. 6. You resided in Charlton during the years 1871, 1872, and 1873, did you not?

A. Yes, sir.

Q. 7. Did you hear any rumor of George C. Valentine using any racks or cloths or any new improvement in making cider during that time?

Objected to as immaterial.

A. No; I heard nothing about it in 1871 or 1872 or 1873.

Q. 8. Did you have any occasion in 1874, in the early part
181 of the fall, to visit many places in the county of Saratoga? And, if so, state what your experience was at that time.

Objected to as immaterial, irrelevant, and incompetent.

A. I was traveling in the fall of 1874, in October, eleven or thirteen days around the assembly district, in every election district in it.

Q. 10. During that time did you see or hear of Valentine using racks or cloths?

Objected to as immaterial.

A. I did not; I don't think in my traveling I was in but one cider mill; I was into — one, two, or three times.

Q. 11. Whose was that?

A. Chambers'.

Q. 12. Did you see what he was using in making cider?

Objected to as immaterial.

A. Yes, sir.

Q. 13. What was it?

A. When I was there he was using straw.

Q. 14. What object did you have in visiting these places at that time?

A. I was running for member of assembly.

Objected to as immaterial.

The WITNESS: I was around looking——

Q. 15. You have been employed by the complainants in this case to see if you could find any evidence as to whether or not George C. Valentine was using these racks and cloths in making cider prior to September 11, 1874, have you not?

A. Yes, sir.

Q. 16. State what experience you have had in looking for such testimony.

Objected to as immaterial and incompetent.

A. I couldn't find any one——

Mr. KING: That is not the thing you are asked. If you want this witness to swear to an untruth examine him in this way.

The WITNESS: Experience?

Mr. KING: Yes.

The WITNESS: My experience was that I tried first to find one that worked for him.

Mr. KING: Is that your experience?

A. Part of it.

182 Mr. KING: That is experience?

A. I don't know whether it is experience or not. I understand by experience what I learn.

Mr. KING: Keep what you understand to yourself, but just answer the question.

A. That is what I mean when I answer the question.

Q. 17. Go on and state what experience you have.

A. As I said, I found that some that I was informed had worked there was dead. A man by the name of Witbeck, said to have worked there in 1872 and 1873, died with the consumption, and some others that lived close by, very near by, that were in the habit of being in the mill, a man by the name of Van Vranken, Rooney, a son of a man that lived there close by, was dead. One died two years ago and one died last fall, and Rooney dropped down in the field. I heard Van Vorst's son worked there, and he died in Michigan this summer, and some one told me an Irishman was there somewhere about those times, and he was dead; and looking for those that worked there, young James Reily—I was told he was to work there either thirteen or fourteen years ago, and he died at Utica with consumption; and, come to look around, I could get track of no one that worked there. I was unable to find any one that knew of his using them before 1874; — was the earliest I could find anybody that recollected of seeing them. The first one that I could strike that was present in the mill and saw it was in 1874.

Cross-examination by Mr. KING:

Q. 18. What time in the fall of 1881 was it you had this conversation with Valentine?

A. When he was making cider.

Q. 19. What time in the fall?

A. I can't tell exactly, but it was, I should think, the latter part of October or first of November. I was getting a load of sand.

Q. 20. Did he say during that conversation when he experimented?

A. Good while ago, before it was patented.

183 Q. 21. Did he say how long he had used racks and cloths?

A. I don't think he did.

Q. 22. When you were around electioneering in 1874, what were you electioneering for?

A. I was running for member of Assembly.

Q. 23. You were looking out for your interests for member of Assembly?

A. Yes, sir.

Q. 24. You were not at that time considering about anybody else's business—cider making or anything else?

A. No, sir.

Q. 25. You were not especially enquiring among the neighbors as to what George C. Valentine done in reference to making cider?

A. No; I was in Chambers' mill to see him about election; to get me votes.

Q. 26. You didn't bother about cider making at that time?

A. No.

Q. 27. If there had been any rumors you probably would not have heard about it?

A. Oh, yes; I hear a great deal about cider making.

Q. 28. While you were electioneering?

A. While you are around electioneering you hear something about cider making.

Q. 29. I thought you went especially about getting votes?

A. Some others would take something else; that is, some of them; that was my business.

Q. 30. You can't swear that George C. Valentine did not use racks, forms, and cloths before 1874?

A. No, sir.

Q. 31. Only you didn't happen to hear of it?

A. I never heard anything about it.

Q. 32. By whom were you employed to get this testimony?

A. Mr. Ward.

Q. 33. The attorney for the plaintiff in this case?

A. I understood he was.

Q. 34. What have you been receiving for that work?

A. The recompense?

Q. 35. Yes.

A. $50.

184 Q. 36. What have you been receiving to be a witness in this case?

A. Not anything; I came here and he said he wanted to swear me.

Q. 37. You have been in attendance here before?

A. I was down the 8th and 9th of September—yes, I have been here before.

Q. 38. For all you know George C. Valentine may have been using racks, forms, and cloths in the business of cider making before 1874?

A. For all I saw.

Q. 39. From all you heard?

A. From what I heard he had not.

Q. 40. Who told you?

A. John Chambers told me; he told me George Valentine had been using them a couple of years, and he told me Hoyt was using them and Seeley; he told me that in 1876, I think; I was in his mill and saw the cloths, and that was the first I ever saw the cloths in his mill.

Q. 41. In Chambers' mill?

A. Yes, sir; I was going by, and the pomace looked like pomace I threw out of a sack. I was down on justices of the peace business.

Q. 42. What do you say Chambers told you at that time?

A. We were talking about this matter, and he said Valentine used it a couple of years or so, and Hoyt used it.

Q. 43. And he had used it a couple of years before 1876, Chambers told you?

A. I think I understood him he had used it a couple of years; Seeley had used it at Burnt Hills, and Hoyt was using it.

Q. 44. How long had Seeley been using it?

A. I understood about the same length of time.

Q. 45. Who else?

A. Leander Hoyt, living in the same neighborhood, off south about a mile and a half.

Q. 46. He used it two years before 1876?

A. No, sir; he was using it that season.

Q. 47. [Did] Chambers tell you how long he had been using it?

A. I understood him that was the first season.

Q. 48. Did he tell you where he had learned it?

A. When he spoke about that I asked him if he was using that, and he told me who was using it.

Q. 49. Did he tell you how he found out all about it?

185 A. I don't think he did; he said they were trying to use it, and, as I understood him, he laid aside his crib and had to come back to the crib, and it worked well, and I think he has worked it ever since.

Q. 50. You don't know anything about his using anything else since then?

A. No, I don't know of his using anything but the cloths and the crib.

Q. 51. What is your business as a rule—sort of a detective?

A. No, sir.

Q. 52. Have you been accustomed to being employed as detective or spy?

A. No, sir.

Q. 53. Haven't you been employed by anybody to find out criminals or look up evidence of this description?

A. No, sir; my business has been in justices court.

Q. 54. Yes or no?

A. Employed as a detective?

Q. 55. Yes.

A. No, sir; I wrote to Mr. Ward when he wrote to me, if it was legitimate business I would do it, and Chambers was the first man that I spoke to; I don't remember ever being employed as a detective.

Q. 55. Haven't you been accustomed to hunt up criminals?

Objected to as irrelevant and immaterial.

A. My business has been to a great extent, not so much lately, when a man had anything stolen he came to me and employed me to look into the matter; I have practiced a good deal on that and took a regular fee for it; prosecuted it.

Q. 57. You are here a voluntary witness to-day?

A. No, sir; I wrote to Mr. Ward Monday he had better come up and subpœna the witnesses; I went to Galway and got home Thursday morning, and there was a letter there he wished I could get the witnesses and come down.

Q. 58. You say you have not been paid for your testimony for to-day?

A. No, sir.

Q. 59. Then you are a voluntary witness?

A. Very well, if that makes me a voluntary witness; he called me on the stand.

Q. 60. You hadn't any other business here?

A. Than to swear?

186 Q. 61. Yes.

A. Yes, sir.

Q. 62. What?

A. He said he wanted to see me.

Q. 63. Has he paid you any witness fee to-day?

A. No, sir; -or subpœnaed me.

Q. 64. All the money you have got out of this thing was what you reaped as a spy and detective?

A. I don't say that by considerable; there was no spy about it. I went to Chambers and told him to tell me a man that knew that fact and I would subpœna him.

Q. 65. You got fifty dollars to testify here to-day what Chambers told you?

A. No, sir.

Q. 66. What did you get fifty dollars for?

A. For looking around to see if I could find the men who knew when they used this press first.

Q. 67. If you were going to employ a man to do that same sort of business, what would you call him?

Objected to as irrelevant and immaterial.

A. I should not call him a spy or detective.

Q. 68. What would you call him?

A. I should call [him] a man that I had employed to find who had knowledge of certain facts—a man whom I had employed to get knowledge of certain facts.

Q. 69. What are those people usually called?

A. I can't tell you.

Q. 70. If you were in the army and wanted to get things on the other side, what would they call you?

A. I don't understand I was employed to pick up evidence on one side; I was to find men who were acquainted with the facts. If I could find men that knew they used it before, they wanted to know it.

Q. 71. It is natural for a man to want to know something against himself?

A. Wanted to know if there was anything against it, then they would know; I don't know what is natural.

Q. 72. Tell us what you got fifty dollars for.

Objected to as having been already answered.

A. I will, sir; I got the fifty dollars for going to see Kingsley, for going to see Arnold, for seeing Hoyt, for seeing Chambers,
187 for seeing Harvey, for seeing Collins, for seeing William Barrett, for seeing James Kernan, seeing David Wickes, Joseph Maxwell, Mr. Brewster, Mr. Alexander, and a great many others.

Q. 73. Who are all these people you are testifying about that you were employed to go and see?

A. Kingsley is a man that moved onto a farm in 1874 adjoining the farm that Valentine owned, about half a mile north, to see what he knew about that; he told me what he knew about it. Arnold, living east of it, moved on that farm, he said, in 1874, and sold his place there. I spoke to Mr. Maxwell; he is living about a mile and a half from the village, the other side of Chambers'; Mr. Wickes was living up north of the village about a mile.

Q. 74. What did you go and see these people for? What were you employed to go and see these people for?

A. To see if they knew when he first commenced using these articles.

Q. 75. How many of these people did you see that knew of his using these before 1874?

A. I didn't find any.

Q. 76. Did you see all these people you have named?

A. Kingsley and Arnold, living east of him; Maxwell, Wickes——

Q. 77. Tell us what Andrew Kingsley told you.

A. I asked him when he first commenced using, and he said he didn't know, but he rather thought it was the first year he moved or the year after.

Q. 78. What time did he move there?

A. He said he moved there in the spring of 1874.

Q. 79. Kingsley said it was 1874 he used it?

A. That was his opinion, but whether he used it before he couldn't tell.

Q. 80. What was the next man?

A. Arnold told me the same.

Q. 81. The next man, who was *it?*

A. The next man was Maxwell, touching Chambers; I asked him how long he thought Chambers used it; he said he thought he used it for four or five years; Wickes thought he used it four or five years.

188 Q. 82. In regard to Chambers?

A. Yes, sir.

Q. 83. They didn't say anything about George C. Valentine?

A. I don't know whether I said to them anything about it. This was in another neighborhood, the mill close by, and I saw Frank Ashdown and talked with him about it and Mr. William Taylor.

Q. 84. What did Ashdown say?

A. He is a brother-in-law of Hoyt.

Q. 85. What did he say about Valentine using it?

A. He said he was there and saw him using it, but to save his life he couldn't say when it was. It was before he quit manufacturing, right in the neighborhood that his brother.in-law wanted he should use cloths, and he went there and picked up the pomace, and he thought he could get more juice than he got out of his. He said another time he wanted he should go there, and he went there and tried it again, and he still made that fall. That was in 1875, the last fall he made there, and Hoyt told him if he ever manufactured he should use racks and cloths.

Q. 86. When was the first time he went there?

A. He said he couldn't tell; not exactly.

Q. 87. The last time was in 1875?

A. He thought the last time he went there was the last time he made cider.

Q. 88. He didn't tell you how many years he made cider before that?

A. He had been making there for some time. He said he couldn't fix the dates; those were his impressions. He left the mill and Hoyt commenced, and he said Hoyt used the cloths, and Hoyt told me the racks and cloths he got in 1876; went and had them sawed out.

Q. 86. Anybody else you recollect you went to see?

A. James M. Kernan; I saw him one night. He said he could tell how long Chambers had used it—that is, he thought he could, and he began and figured it, and it was either five or six years. He made cider twenty-odd days.

Q. 90. 1875 or 1876?

A. This was 1882 I had this conversation. He said it was
189 the last winter he went to school he made cider, and Chambers' boys told him they had used cloths that year. Barrett was in there and he figured it up and put it about six years, and about every man I asked put it to five or six years.

Q. 91. Did you see Andrew Van Vorst?

A. Yes, sir.

Q. 92. What did he say?

A. He wouldn't say anything about it, when it was or when it wasn't.

Q. 33. How was that?

A. I will tell you how that was; I told him my business was to find a man that knew if I could that George Valentine used that before 1874—them slats—and I had been unable to find a man that knew; I had found a great many that might know that lived close by there who was dead, and went on and recited the dead, and he thought more than that knew. Says I, "Do you know?" Says he, "I am not under oath." I says, "I haven't found out yet of anybody that knew from you." That was the conversation I had with him."

Q. 94. Have you told sundry people upon whom you have called and had conversation in relation to using these racks, forms, and cloths by Valentine that you didn't want to find anybody that would testify Valentine used it before 1874?

A. I won't say whether I did or not; I told Chambers on the first start.

Q. 95. You won't swear to that fact?

A. No; I won't swear but what I said I didn't want to find anybody; I don't think I ever said I didn't want to find anybody.

Q. 96. You won't swear to that now that you made that statement to anybody?

A. That I didn't want to find anybody that saw him use it before?

Q. 97. Yes.

A. Oh, no; I won't swear but what I said that; but I have told a good many I would like to find a man that knew.

Q. 98. What is your usual*ly* pay per day?

A. Well, now——

Objected to as irrelevant and immaterial.

A. I was up to Galway this week trying an assault and battery there two days with the jury, and the man gave me $10; I told him to give me what he what he was a mind to.

190 Q. 99. You never were admitted to the bar?

A. No.

Q. 100. What was the highest you ever got per day?

A. I declare I couldn't tell you; I have got, I guess, from one dollar up to ten.

Q. 101. Who offered to give you the $50; was that the fee you demanded, or was that the offer that was made?

A. When Mr. Ward came there he said they would pay—he says: "I will give you $10 now." "Now," says I, "if I take hold of this matter as far as the fees hereafter—he said he was dealing for other parties, or for a company—I will leave the amount to yourselves what I really ought to have." He came up there again and was around subpœnaing some witnesses, and he gave me five dollars to cover expenses, and wanted I should come down the 8th or 9th of

September, I think, and he would settle up with me. Mr. Ward asked me after it was over what I wanted. "Well," said I, "I will leave it to you." He says: "I don't know what to say." Says I, "You let me have $15 and you can give me $35, and that will make it $50."

Q. 102. Haven't you seen Mr. Boomer, of the Clark Pomace Holder Co.?

A. Yes, I was introduced to the gentleman.

Q. 103. When?

A. I think it was the 8th of September last.

Q. 104. Seen him since then?

A. I saw him to-day.

Q. 105. Haven't you seen him since the 8th of September until up to to-day?

A. I was here the 9th of September.

Q. 106. Since the 9th of September?

A. No, sir; not to my recollection.

Q. 107. What conversation did you have with Mr. Boomer in relation to this matter?

Objected to as irrelevant and immaterial.

A. I don't know as I ever had any conversation with him direct; whether he has ever heard me talk about it——

Q. 108. Don't you remember any such thing as that?

A. No, sir.

Q. 109. Had any letters from Mr. Ward?

A. Yes, sir.

191 Q. 110. In relation to this matter, giving instruction as what you should do?

A. I had some letters telling about, if I could find men that were acquainted with such and such facts, those were the ones he wanted.

Q. 111. Distinctly told you what facts he wanted to bring out?

A. I don't know as he told me what men, but he wanted men that were acquainted—had been in the habit of taking their cider, and some men that had been living in the neighborhood around there that had heard certain reports.

Q. 112. You have known George C. Valentine for a good many years?

A. Yes, sir.

Q. 113. What is his reputation around the neighborhood?

Objected to as irrelevant and immaterial; complainants have not attempted to impeach the character of Mr. Valentine.

A. First quality.

Q. 114. People usually believe him under oath?

A. I don't know what people would do; I never heard that question talked about; I never heard anything against his character or reputation.

Q. 115. Never heard he would lie, or lie under oath?

A. No, sir; never heard that he would.

Q. 116. What he states there the people generally believe?

A. I never heard of anybody disbelieving him; I don't know what he states to people, whether they believe it or not.

Q. 117. You never heard they wouldn't believe him?

Complainants object to all this testimony.

Q. 118. Did you see Carroll while you were around?

A. No, sir; I met Carroll here and around the cars.

Q. 119. Did you have any conversation with Carroll about Valentine using these racks, forms, and cloths?

A. Not until I came here that day.

Q. 120. What did you say when you were here?

Objected to as irrelevant and immaterial.

A. I don't recollect now of his saying anything about Valentine using it.

192 Q. 121. Did you call on Edward Merchant?

A. Not as I know of.

Q. 122. Did you have any conversation with Edward Merchant as to what Valentine had done in the cider-making business?

A. Not that I recollect of; never recollect speaking to him about it.

Q. 123. You didn't call upon all the people that were neighbors of George C. Valentine during the year 1874 and prior to that time?

A. I don't know as I did.

Q. 124. Do you remember who the next-door neighbor of Mr. Valentine is—who is living there now?

A. On the east, I think his name is James Manley; lives on the place where Edward Merchant lived.

Q. 125. How long has he been there?

A. I should think two or three years.

Q. 126. Who on the west of Merchant?

A. The one that lives next on the west is Widow Rooney.

Q. 127. Did you make any inquiries how long she lived there?

A. She lived there fourteen years.

Q. 128. Make any inquiries of her as to what Valentine had been doing in relation to using racks, forms, and cloths?

A. I made inquiries of her to see if she could recollect certain things. My object in going there was to see if she could recollect when William Collins worked for Valentine; she told me it was either thirteen or fourteen years ago.

Q. 129. Did you ask her anything about what Valentine had used in his business of cider making?

A. I don't think I did. I told her that was the reason I wanted to find out; that Collins worked there when she first moved there and her son worked there.

Q. 130. Who is the next-door neighbor on the east of Maxwell?

A. Andrew Van Vorst's boy moved in there this season, and before that it was Filkins; he only lived there a couple of years, on the place where Andrew F. Van Vorst used to live.

Q. 131. You didn't inquire in the immediate neighborhood of George C. Valentine?

A. This man only lived there a year or two, and Van Vranken
193 lived right by there, and he died last fall; Jacob Van Vorst used to live the other side, too. There is one point, in 1874, in Chambers' mill, after I got through with that, whether what I stated — in 1874; I was there and I meant to swear that I *knew* nothing but straw and crib around; that I never saw any cloths around until after that; whether he used cloths that fall or not I don't know; I wouldn't swear he didn't; I was by there and in there every fall.

Mr. KING: I move to strike that out, as it is not in answer to *any* question and as immaterial.

JOHN G. WARD, being duly sworn in behalf of the complainants, testified as follows:

Examined by Mr. WARD:

Q. 1. State your age, residence, and occupation.

A. Pretty near thirty-three; farmer and cider maker; live in Dormansville, Albany county.

Q. 2. I show you letters patent 187,100; have you examined that patent before?

A. Yes, I have looked at it.

Q. 3. From your experience and knowledge as a cider maker, could you construct and use the cloth, rack, and form system in there described?

Objected to as not in their rebuttal.

A. I think I could; I don't know as I would make that just as we make them now; I think I could get it by reading over this and looking at that (referring to diagram).

Q. 4. By reading the specification and looking at the drawing?

A. Yes, sir.

Q. 5. How would you make a guide-frame?

Same objection.

Mr. KING: Not from what you have seen in other things but from that thing you are testifying to?

A. If I had never been in a cider mill I would not have known anything about it, but being used to the business of laying up cheese I think by looking at that I could go right at it and make one.

194 Q. 6. Tell what the guide-frame would consist of?

A. I consider that to be the hoop, we always call it.

Mr. KING: Are you testifying from your knowledge of that thing irrespective of the cider-making business?

A. Taking my knowledge in cider making in connection with this, always looking out for improvements.

Q. 7. How was the hoop made that you speak of?

A. Made of four boards, the ends nailed together and something in the corners to brace them, without any top or bottom to it; something always used where I made cider; never made cider without.

Q. 8. Similar to Defendant's Exhibit No. 3, of December 5, 1881?
A. Well, yes, although I always used one more like that.
Q. 9. Defendant's Exhibit No. 1, of December 12, 1881?
A. That is what I should use, because we always had them in the mill and wouldn't know how to use anything else.
Q. 10. Or "F," of Complainant's Exhibit No. 9?
A. We always used one like this (Defendant's Exhibit No. 1, December 12, 1881).
Q. 11. Would you construct a guide-frame similar to Defendant's Exhibit No. 1, of December 12, 1881?
A. Yes, if I didn't have one already made; we always had one, and would put it right on and use it; never made cider without one.
Q. 12. Do you know of the rack, cloth, and form system being used in making cider?
A. Why, yes, I use it.
Q. 13. When did you first learn [of] that system being used?
A. I couldn't tell; I don't think I ever heard of it before the Centennial; I saw some at the Centennial—saw them make cider there, and that was the first I heard of it; the first I ever saw was in Albert Bedell's mill in New Baltimore.
Q. 14. What kind of press did he have?
A. One of Boomer's presses and two others.
Q. 15. That was the first you ever heard?
A. The first I ever saw it.
Q. 16. The first you ever heard of the system?
195 A. Was about the time of the Centennial, but I didn't see it until after that.
Q. 17. You say you first heard of it from men that had been at the Centennial?
A. Yes, sir.
Q. 18. How long have you been engaged in making cider?
A. Ever since I can remember I helped make; I have made on my own responsibility for 12 years.

Cross-examination by Mr. KING:

Q. 19. You are not a carpenter?
A. No, sir.
Q. 20. Never did any carpenter work?
A. I have sawed off boards once in a while.
Q. 21. Never followed the trade?
A. No, sir.
Q. 22. Never manufactured any cider presses?
A. No, sir.
Q. 23. If you had never seen a cider mill could you construct a form and racks from these letters patent?
A. Probably not; I wouldn't know what that meant; wouldn't know anything about it; would be all Dutch to me.
Q. 24. If you had been a carpenter do you suppose you would have known about that?
A. I don't know what I would have known if I was a carpenter;

but as a farmer I don't think I would have known anything about it.

Q. 25. As a cider manufacturer?

A. Yes, sir; I think I would.

Q. 26. Is that form made in the same shape as that drawing is (Defendants' Exhibit No. 1, known as the Casper form)?

A. I don't think it is.

Q. 27. When in 1876 was it that you heard about the racks, form, and cloths being used?

A. I think it was in the fall.

Q. 28. You say you saw this rack, form, and cloth used in Bedell's mill on a Boomer & Boschert press?

A. Yes, sir.

Q. 29. When was this you saw it?

A. I think it was four years ago; I am not positive.

Q. 30. 1878?

A. I think it was.

196 Q. 31. Hadn't you used racks, forms, and cloths before that?

A. No, sir.

Q. 32. What had you used?

A. Always used straw before that, and that fall I used cloths without the racks; I had heard of the racks.

Q. 33. When did you hear of the racks?

A. About the time of the Centennial.

Q. 34. Hadn't you used racks before that?

A. No, sir; always used straw, and I used cloth the year before I used racks without the racks.

Q. 35. What year did you use racks?

A. The year before I built the racks myself; I think it was about three years ago, or four.

Q. 36. Are you any relation to the complainant's counsel in this case, W. E. Ward?

A. Yes; I am his brother.

Q. 37. You are merely testifying in relation to your ability to manufacture racks, forms, and cloths as laid down in that patent from the knowledge you have acquired by cider making?

A. Yes, sir.

Adjourned to December 20, 1882, at Van Santvoord & Hauff's office, in the Times building, New York city, at 10 a. m.

197 U. S. Circuit Court.

THE CLARK POMACE HOLDER COMPANY
against
WILLIAM H. FERGUSON.

JOHN CLARK recalled by complainants:

Examined by Mr. WARD:

Q. 1. Mr. Clark, you are the patentee named in the patent 187,100?

A. Yes, sir.

Q. 2. Did you make the model filed upon that application?

A. Yes, sir.

Q. 3. Did you also make this model (Plaintiff's Exhibit No. 9)?

A. I did.

Q. 4. Will you state how the model filed upon the application for the patent 187,100 compares with the model, plaintiff's No. 9?

A. This exhibit compares with the drawings exactly, but the model was extended above to represent a full-sized press.

Q. 5. State how.

A. Two cross-beams at the top; these posts extended one foot high.

Q. 6. Like the cross-beams on the bottom?

A. Same pieces exactly; one goes on the bottom and one on the top. You could turn it bottom side up if you wanted to. That original model had screws in to represent the screws of the press, the follower-beam, and guide-frame. It was sent to Washington with the entire apparatus screwed down into sawdust for pomace by the screws, representing ordinary press screws—shipped and packed in that manner and sent.

198 Q. 7. Particularly how did the guide-frame compare with the guide-frame of plaintiff's exhibit?

A. Exactly; that is one of fifty models I have made—the same as this model here—perhaps fifty I have made.

Q. 8. The guide-frame is exactly like this?

A. Yes, sir; guide on the post of the press, with notches or suitable projections for guides.

Q. 9. How did you come to make so many models?

A. Buying and selling the patent I exhibited to purchasers and left them around at different places.

Q. 10. How soon did you begin to do that after you applied for the patent?

A. The fall after the State fair of which I spoke in the other testimony—State fair at Saginaw, Mich.

Cross-examination by Mr. FEATHERSTONHAUGH:

Q. 11. Will you please state when you made the first model, the original model?

A. The model was made with the application for the patent; the date I couldn't remember.

Q. 12. How long did you have that model in your possession before you applied for the patent?

A. I think I packed it in as soon as it was made—packed it in Detroit and shipped it to Washington; I suppose it was shipped.

Q. 13. When did you make the model now here and exhibited?

A. The day before the last sitting in Albany that I was there. I didn't make it myself; I directed it to be made; I helped nail it at the machine shop.

Q. 14. Did you cause this model to be made after the original model?

A. Exactly, except one or two racks more here than in the original—more of each kind.

Q. 15. Did you have a copy of the original model from which you made this?

A. No, sir; made it from memory.

Q. 16. How, then, did you describe this model at the time you had it made?

A. Which model?

Q. 17. The exhibit here.

A. I ordered so many sticks so long made from boards,
199 punched and riveted, with holes bored so far apart, and they went together.

Q. 18. Do I understand, then, you had it made simply from your recollection of the original model?

A. Yes.

Q. 19. You didn't use then the specifications and drawings at the time you had this exhibit made?

A. I didn't have them with me.

Q. 20. Does this model then conform in every respect to the original model which was filed at the Patent Office?

A. I think there were two flexible and two rigid racks in the original model; here are more.

Q. 21. That is, there are more cross-pieces?

A. More racks.

Q. 22. Are there any more cross-pieces upon the racks now exhibited?

A. I think there is two more; I am not positive there was a middle rack across there, but I should say there was; we make them every way.

Q. 23. Don't you recollect there were but two cross-pieces in the racks in the original model?

A. I don't recollect whether there was or not.

Q. 24. How many cross-pieces have you in this model?

A. Four.

Q. 25. Will you swear positively that the model now exhibited here conforms in every respect to the original model filed at the Patent Office?

A. No, sir; I couldn't swear to impossibilities.

Redirect examination by Mr. WARD:

Q. 26. Explain what you mean by saying that the model filed at the Patent Office does not correspond exactly with this?

A. You want an explanation of it?

Q. 27. Yes, sir.

A. Bottom racks goes what we call bottom side up, and is a rigid rack; the form is adjusted next with notches in the form to correspond with the side of the post and guide by it; the cloth is laid on and folded; this was filled with sawdust, when it went to the Patent Office, to represent pomace; the form was then raised and a flexible rack put under, the first one being rigid; the form replaced on top of the flexible rack, and another cloth laid over, filled with
200 pomace and folded, form removed, and rigid rack put on. That is the original model, bearing — what I said previous

that the pressure beams and screws were in the model and were not shown in the draft or drawings.

Q. 28. With this exception the models are exactly alike?

A. Yes, sir; for all practical purposes. This model is smoother than mine; mine was made of rough sticks.

Q. 29. I show you Defendant's Exhibit No. 4, of January 12, 1882. Was any such form or guide-frame in the model filed?

A. No, sir.

Q. 30. The guide-frame had its four vertical sides closed?

A. Similar to the one here (Plaintiff's Exhibit No. 9.)

Recross-examination by Mr. FEATHERSTONHAUGH:

Q. 31. In laying up your model just now do you lay it up from the specifications as given in the patent?

A. I lay it up from memory.

Q. 32. It is not laid up, then, from the specifications?

A. Laid up as I should lay it up, anyway; represents my invention.

Mr. WARD: You don't understand his question; he wants to know if you lay it up from your memory from the way you sent — to the Patent Office.

Q. 33. I mean at the present time.

A. I lay it up as it went to the Patent Office.

Q. 34. Are you now following the specifications in laying it up?

A. Practically the same.

Q. 35. What have become of the fifty models you say you have made at different times?

A. The fifty may be an exaggeration; C. G. Hampton had some, of Detroit.

Q. 36. Have you any of those fifty left?

A. I think not.

Q. 37. The model exhibited here was made for an exhibit, was it not, for use in this case?

A. Called for by the Patent Office to be used in this case to represent the model sent to Washington, and to the best of my
201 knowledge and ability and memory as a machinist and mechanic that is like it.

Q. 38. Did the model which you sent to the Patent Office at the time you filed your application have the cross-pieces as exhibited upon this Plaintiff's Exhibit No. 9?

A. Same as that.

Q. 39. And the same notches in here for the guide-posts?

A. Yes.

Q. 40. Please examine that drawing (paper shown witness, Plaintiff's Exhibit No. 13).

A. Yes, sir.

Q. 41. Is that a correct drawing of the model that was sent to the Patent Office at the time you filed the application?

A. No, sir.

Q. 42. Will you please state what that is then?

A. This invention is secured by letters patent——

Q. 43. No, the drawing.

A. "Clark's cider and wine press crib or pomace holder."

Q. 44. Will you state what that is?

A. That is the cut of a pomace holder secured to me by letters patent granted March 3, 1874.

Q. 45. Did you then make that form in 1874?

A. It is the cut of a photograph taken of a picture of that apparatus.

Q. 46. Taken when?

A. Some time in 1874; I can't tell when.

Q. 47. In the summer?

A. I couldn't say whether summer or fall.

Q. 48. Did you make the model from which the photograph was taken?

A. Yes, sir.

Q. 49. When was that model made?

A. I should think about the time the other model was made that went to Washington; I made two or three at that time.

Mr. WARD: You mean for the patent of 1874?

A. I showed both models.

Q. 50. Do you recollect having this model from which this cut is made in Syracuse?

A. No, sir; never was there.

Q. 51. Or a model similar to this?

A. Yes.

Q. 52. Wasn't that in the month of August, 1874?

202 A. Well, I couldn't say as to that what month it was in, as I said before.

Q. 53. Will you say it wasn't the month of August, 1874?

A. No, I wouldn't say it wasn't or it was.

Q. 54. Will you say it wasn't the month of July, 1874?

A. I am not positive in regard to any three or four months there in the summer.

Redirect examination by Mr. WARD:

Q. 55. What two models do you mean?

A. This model is all flexible racks—the model from which this picture was taken—and is a part and par*tial* of my March 3d patent, 1874.

Q. 56. Both the models referred to in your answer refer to the patent of March, 1874?

A. This was the only one that was ever photographed until after the State fair, or picture of it taken, except in the application for the patent.

Q. 57. In the application for the patent of 1874 you mean?

A. Yes.

Recross-examination by Mr. FEATHERSTONHAUGH:

Q. 58. What was that application for the patent of 1874; what was the patent for which application was made in 1874?

A. It was a sectional curb, outside cribbing with the flexible racks, whole cloth; I believe that is the object.

Redirect examination:

Q. 59. What is the number of the patent?
A. One hundred and forty-eight thousand and thirty-four.
Q. 60. Did this drawing on the last page of Plaintiff's Exhibit No. 13 refer to the invention described in the patent 148,034?
A. Yes; that refers.

Recross-examination by Mr. FEATHERSTONHAUGH:

Q. 61. Do I understand, then, you applied for two patents?
A. In 1874?
Q. 62. Yes.
A. No, sir.

203 Redirect examination by Mr. WARD:

Q. 63. Did you write or authorize to be published the advertisement in this Exhibit No. 13?
A. No, sir; never knew of it until I saw it.
Q. 64. Or on the back page?
A. No, sir.
Q. 65. Or the description on the first page, third column, under the heading, "Laying up the Cheese," the part commencing "The best system yet devised?"
A. No, sir.
Q. 66. Both of these publications were made without your authority?
A. Certainly they were, because we had no correspondence; were in a row with the Boomer & Boschert Press Company about an old pomace holder.

Recross-examination by Mr. FEATHERSTONHAUGH:

Q. 67. In that same column occurs the words, "Laying up the cheese—John A. Clark's system?"
A. I don't know who that is; that must be me.
Q. 68. Are you the John A. Clark referred to there?
A. I presume likely, but it is a mistake of print.
Q. 69. You think it is?
A. Yes.
Q. 70. You say that was not published by you, any of it?
A. I say that was not; it refers to my experiments, experimenting with my pomace holder.
Q. 71. Do you know by whom it was written and published?
A. I do not; I don't recognize the matter at all.
Q. 72. You knew of it at the time it was published?
A. I knew it at the Saginaw State fair at first.
Q. 73. When was that?
A. Twenty-second or 15th of September they commenced; twenty-sixth annual fair at East Saginaw, Mich.
Q. 74. September, 1874?

A. I think so; where we first exhibited it.

WILLIAM H. HOLBROOK, being duly sworn in behalf of the complainants, testified as follows:

Examined by Mr. WARD:

Q. 1. Please state your residence.

A. Sherburne, Mass.

204 Q. 2. What is your business?

A. I am in the cider business, and more especially now in the sand business. I furnish this refining sand.

Q. 3. Are you a son of Mr. Holbrook, formerly of the firm of Holbrook, Jeffries & Co., of Sherburne, Mass.?

A. I am.

Q. 4. Your father is [the] Jonathan Holbrook named in the patent 117,075, improvement in cider presses?

A. Yes, sir.

Q. 5. Please state what experience you have had in the cider business and in cider machinery.

A. Ever since I can remember, almost; thirty years ago I worked in cider, more or less. My father is one of the oldest men, I suppose, in that line of business.

Q. 6. How old is your father now?

A. He was 73 last February.

Q. 7. How old are you?

A. I was 43 last July.

Q. 8. You have been engaged in making cider yourself?

A. Yes; I never was connected with my father at Albany, but at Sherburne; I was interested there in 1872 and 1873.

Q. 9. You are familiar with the device used by him in laying up cheese?

A. Yes; I was familiar with his process there of making cider.

Q. 10. And also the Clark system?

A. Yes; after that, I think about 1875, that I first knew about that, and in 1877 I was employed by the Duffy Cider Company of Rochester, N. Y., as refiner. I was a member of the superintendent's family, Mr. Bigelow, and by that means I was thrown in with the making and manufacturing of cider, and they were using the Clark system there, and I became quite familiar with it.

Q. 11. Will you please state the practical difference between the Holbrook system and the Clark system?

A. Well, my father's system is a system of racks similar to this (Exhibit No. 9), but he made the space the same on both sides of the rack, but the main difference is in the curbing that goes around the side of it. We used a curbing—upright slats that are locked together—and that forms the layers, and it confines the slats in place.

205 Q. 12. It is laid up with layers inside of this curb, with racks between each layer?

A. Yes, sir.

Q. 13. Explain the advantages.

A. The disadvantages of that is that these cloths that are put around the side are very apt to get torn; good deal of friction on the sides; uses the cloths up; very apt to tear the cloths, and it is more expensive to build the curb. I think the other system is much to be preferred.

Q. 14. The Clark system?

A. Yes, sir.

Q. 15. Have you been among cider makers more or less for the last few years?

A. Yes; I have been traveling amongst them all the time since 1875 especially, including 1875.

Q. 16. Is the Clark system pretty generally adopted among large cider makers?

A. Yes; it is where they are using the improved presses, and in some other cases.

Q. 17. When the pressure is applied upon your father's crib do the cloths become slack and work up so as to impede the drainage of the cheese, of the cider?

Objected to upon the ground the counsel is leading the witness.

A. Yes; it does more so than the Clark system.

Q. 18. In your father's system they can't use extended racks?

A. No; the size of the layers—the breadth of them—is formed by the curbing that inclines the rack.

Q. 19. How did you come to examine the two systems?

A. My father had out the patent for making cider, and I think it was in 1875 I was thrown in with Mr. Dennis, who then controlled the Boomer & Boschert press, and I had some business with him; he was interested in the Boomer & Boschert press; I found in traveling through the country they had the impression they could not use the racks and cloths—that is, through my vicinity—that vicinity of Massachusetts, because my father held the patent; they were under an impression he had a patent on that system, and I looked into that description I could get of Mr. Clark's process, and was satisfied after reading over father's patent and all it would not interfere with this patent.

206 Q. 20. I show you letters patent 187,100. Have you examined that patent before?

A. Yes, sir.

Q. 21. Would you be able, from an examination and reading of that patent, to construct the apparatus described in it?

Objected to upon the ground the witness has not been shown to be an expert in the construction of any mechanical apparatus.

A. I think I could.

Q. 22. How does the construction of the apparatus described in there compare with the model, Plaintiff's Exhibit No. 9?

A. Well, I should think the description was very fair of it; I don't see how you could make anything else out of it.

Q. 23. If you were to manufacture the apparatus described in there would you make such a machine as the model?

A. Yes; I think I should. I had before had some experience in making these racks. I had a system in the manufacture of these racks—I think it was in 1872—for my father, and from the knowledge I had in making them and what was required, the form to lay the cheese by and everything, I don't think I could from that description make anything essentially different from that.

Q. 24. How would it be with other persons skilled in the art of making and using cider presses to make the apparatus like that from the description of the patent itself?

Objected to upon the ground the witness cannot state what other persons might or might not be able to do.

A. I think they could; I think I have seen lots of cider makers that would come to that same idea.

Cross-examination by Mr. FEATHERSTONHAUGH:

Q. 25. Is your father still in the cider business at Sherburne?

A. Yes, sir.

Q. 26. What device does he use now in the manufacture of cider?

A. His old system—that is, the system which he holds the patent on. He uses racks and cloths, but with curb.

207 Q. 27. He doesn't and has not used the Clark pomace holder device?

A. No, sir.

Q. 28. In making a model similar to the exhibit now before you, would you be enabled to make it entirely from the description given in the specification without using the knowledge you otherwise have?

A. I think it would have been the same.

Q. 29. Have you read the specifications in letters patent 187,100 through carefully?

A. Yes.

Q. 30. Would you be enabled, from such a reading and from the understanding of it, to lay up a cheese?

A. Yes.

Q. 31. Please proceed with the present model before you as though you were laying up a cheese from the specifications, naming each step as you go along.

A. First the platform, and then put a rack, then the form, then the cloth, then fill the pomace level with the top, then fold my cloth over lightly all around, then remove my form, put on a rack; the cloth should be folded carefully, so as to confine the pomace just where the form intends it, so in the pressure on the layer it would come between the racks when the pressure is put on, so as not to come outside; then put on another rack.

Q. 32. I ask the witness now if the specifications direct him to again use the form?

A. Yes; guide-frames should be used.

Q. 33. I am speaking of where it directs you how to lay up a cheese.

A. I should say yes.

Q. 34. In what part of the specification do you find a direction to again use the form after a second rack is placed?

A. I should infer from reading the whole matter through—the description and all; it seemes to me I couldn't come to any other conclusion than that was the way to do it.

Q. 35. Is this, then, only an inference you draw from the specifications or from actual directions that you find?

A. I should think that would be direction so I could go on and lay up cheese.

208 Q. 36. Read from the specifications where it directs the form to be laid on the rack the second time.

A. Well, I will read it right through. "The object I have in view is in laying up a 'cheese' for the cider press where each layer is folded up in a cloth to secure uniformity of thickness of all the layers in the mass of cheese, and thus secure uniform pressure on its entire area and to avoid all tendency to break the pomace frames or racks. To this end it consists in the employment of a guide-frame in combination with extended pomace racks, as more fully hereinafter set forth." Then it goes on and describes the whole of it in the drawing. "A represents the lower frame work of the cider press, on which is laid a bed, B. C is a pomace rack, which may be rigid, as shown, or flexible, as described in letters patent No. 148,034, issued to me March 3, 1874. On this rack is laid a guide-frame, D, whose bottom girts are not spaced far enough apart to extend the full length of the rack on which they rest. A cloth, E, large enough to envelop the layer is then laid on the rack inside the frame and opened out to receive the pomace, which is 'struck' level with the girts of the frame, after which the cloth is folded over the level pomace and the frame is lifted off. The next and succeeding racks are in like manner laid on first and filled up and a follower is placed on the upper one when the cheese is ready to press. Laid up in this way the several layers are uniform in thickness and the cheese in mass is level on top and offers a uniform resistance to the pressure over its entire area, thus assuring the expression of all the juice and precluding all danger of breaking the pomace racks." Well, it says, "to this end it consists in the employment of a guide-frame." If we make each a layer we have got to use this guide-frame as a matter of course, and to get our layers uniform and to get them confined in space so the slack of the cloth won't extend outside of the racks here; I don't see how we could lay a cheese any other way.

209 THOMAS P. ROGERS, being duly sworn in behalf of the complainants, testified as follows:

Examined by Mr. WARD:

Q. 1. Where do you reside?

A. In Hoboken, N. J.

Q. 2. What is your business?

A. Cider and vinegar.

Q. 3. How old are you?

A. Seventy-five.

Q. 4. How long have you been in the cider business?

A. Well, I was going to say all my lifetime but about twenty years in New York.

Q. 5. And before that what was your business?

A. I served my time as a hatter.

Q. 6. How long have you been acquainted with this cider-making business?

A. I was brought up in a cider mill when a boy, and been familiar with it ever since; when we used to use the old-fashioned wooden screws.

Q. 7. To what extent are you engaged in the business now?

A. What do you mean; what amount of business?

Q. 8. Yes.

A. That I couldn't tell definitely.

Q. 9. How much sweet cider do you handle a year?

A. We handle a great deal more than we make; every year, more or less, say, from one to two thousand barrels we make ourselves.

Q. 10. How much do you handle?

A. That I couldn't tell. In shape of barrels do you mean?

Q. 11. In any shape?

A. I would have to go to my books.

Q. 12. I want to bring out you are a large dealer.

A. Yes; Yes; good many thousand barrels. I could hardly approximate in my own mind. I can tell you if it is necessary to know.

Q. 13. It isn't necessary, only just to bring out that general fact that you are a large dealer. You say you have been acquainted with the device of laying up cheese and pressing cider your whole life?

A. Yes; there has not been any time in my lifetime but what I could put a cheese up since I first knew it.

210 Q. 14. Have you examined letters patent 187,100?

A. I have seen it; yes, sir.

Q. 15. From reading the specification and examining that patent, would you be able to make the apparatus there described?

A. I think I would be able to make that apparatus without much difficulty; I might not make it just as these patterns are here; I think I could follow the principle; there might be a difficulty in my giving a decision there on these grounds; I am familiar with that press, and I could take it apart and put it together in all sorts of shapes and all its departments and understand it perfectly well; consequently it is impressed upon my mind, and it would be difficult to eradicate those impressions and say I could do it where I had never seen it; there might be a difficulty in my getting the forms like those if I had no knowledge of the press, but I am very familiar with them, and I carry that impression in my mind, and it is difficult to eradicate it and say I could do the thing; I say now I could do the thing. Why? One thing is, because I perfectly well know it—know all its parts; but if I didn't know it perfectly well and hadn't any knowledge of it—never had seen anything of the

kind—it might be difficult for me to arrange all those parts according to this schedule; that is the idea I wanted to convey.

Q. 16. Whether or not, in your opinion, could persons skilled in the art of making and using cider presses make and use the apparatus described in this patent from the description of it?

A. I think I could.

Q. 17. Do you think other persons skilled in the art could?

A. I don't know why they couldn't; if they followed out the description here given they would have to make something somewhat similar to this, I should think.

Q. 18. What is the estimation in which this system is held among cider makers?

Objected to upon the ground the witness has not shown he knows.

A. I think it is held in good estimation as far as I know.

211 Q. 19. State the extent of the knowledge that you have of the estimation in which it is held.

A. I know of a good many presses of this kind being used. I couldn't tell the number. A number of mills that work for us have them. We have influenced some of our mills to get them because we thought they were good.

Q. 20. You buy cider from a great many different manufactories?

A. Yes, sir.

Q. 21. And know what they use?

A. Generally.

Q. 22. Is it preferable to have cider made from this system?

A. We like it.

Q. 23. Where is your place of business?

A. 370 to 376 Washington street, New York.

(No cross-examination.)

GEORGE B. BOOMER recalled in behalf of the complainant:

Examined by Mr. WARD:

Q. 1. You are a member of the Boomer & Boschert Press Company?

A. I am.

Q. 2. What office do you hold in that company?

A. President.

Q. 3. I show you a circular with title page, "Illustrated Catalogue, Boomer & Boschert Press Co., for 1873, Syracuse, N. Y." Is that an annual circular of the Boomer & Boschert Press Co.?

A. Yes, sir.

Q. 4. I also show you a paper marked "Plaintiff's Exhibit No. 13." What is that?

A. This is a paper published by the Boomer & Boschert Press Co. in 1874.

Q. 5. An annual trade circular?

A. No; it is not an annual trade circular; it was an issue got out for the purpose of distributing at fairs in the fall of the year.

Q. 6. About how many were published?

A. About 20,000, I think; I am not certain in regard to the number.

Q. 7. How were they distributed?

A. They were sent by mail to all cider makers, I think, that we had the names of and were distributed at fairs by giving them away at our exhibit while we were using the presses.

212 Q. 8. I also show you Complainant's Exhibits Nos. 14, 15, 16, 17, 18 and 19. Are they the annual circulars published by the Boomer & Boschert Press Company? And state the years if you can.

A. I don't remember this Exhibit No. 14, but I should judge it was a little circular that was thrown out in the year 1875 by the Boomer & Boschert Press Company; I think so, because I think it cannot be anything else, but I don't remember it now; No. 15 is the catalogue for 1876; No. 16 is the catalogue for 1878; No. 17 is the catalogue for 1880; No. 18 is the catalogue for 1881; No. 19 is the catalogue for 1882.

Q. 9. I also show you a circular marked "Boomer & Boschert Cider and Wine Press. Factory and Home Office, Syracuse, N. Y. 1879?"

A. That is the catalogue for 1879 of the Boomer & Boschert Company.

Mr. WARD: I offer that in evidence. Marked "U. S. C. C., N. D. S. N. Y. The Clark Pomace Holder Company ags't William H. Ferguson. Complainant's Exhibit No. 20, December 20, 1882. J. M. R."

Q. 10. Are these exhibits the only publications you have—the only annual circulars for those years, for 1874, 1876, 1877, and 1878?

A. I think they are, though we might have thrown out other circulars, but I don't remember now of having done so.

Q. 11. None that you know of?

A. None that I remember of now.

Q. 12. What is the business of the Boomer & Boschert Press Company?

A. Manufacturing presses.

Q. 13. How long have you been engaged in the business of manufacturing cider presses?

A. About twelve or thirteen years.

Q. 14. How long have you been familiar with the cider-making business?

A. All my life; since I was big enough to understand.

Q. 15. Have you made it a study to learn the best method for laying up cheeses for cider presses?

A. I have during the last twelve years.

Q. 16. What experience have you had in the methods used by various cider makers in laying up cheeses?

213 A. I have practically tried almost every plan that I have seen or heard of, and visited a large number of cider mills in different parts of the country, and have owned a cider mill for a good many years, and used it as an experimental mill to try all

plans and theories of myself and other people. I think I have tried practically pretty near every device that is in use in the country to any extent.

Q. 17. You say you have visited a great many mills in this country and other countries?

A. A great many; I have visited some mills in other countries.

Q. 18. Is a guide-frame made of four boards nailed together at the ends a well-known device among cider makers?

A. It is an old device; the first device that I ever saw or used in a cider mill some thirty-five years ago; about that.

Q. 19. How is it used?

A. It was used at that time with straw; used to form the cheese and keep the straw in place while the pomace was being put in, and used as a guide in turning the straw so as to envelop the pomace—prevent its speading out.

Q. 20. Please describe how it was used.

A. It was laid on the platform of the press and long rye straw spread over its bottom and extended out over the sides of the form. The form was filled nearly full of pomace and the straw turned over, bringing the ends that extend beyond the form in toward the middle of the cheese, and then a little more straw was spread so as to form channels for the cider to pass out, and a little pomace laid on the top of these ends so as to hold them in place; then the form is raised up and four sticks put across the corners under the form and over the layer of pomace and straw so that it supported the form in a new position; then some straw was put on extending out over the pomace, and another layer formed in the same way; in that way they formed four or five or six layers.

Q. 21. Was this guide-frame known by different names?

A. It was; I have heard it called by several.

Q. 22. By what names?

A. Heard it called a hoop, a guide-frame, a cheese-former,
214 a form; although square, it is called a hoop by cider makers.
A guide-frame is the best name for it that there is, the most applicable, because it guides the pomace in forming the cheese and forms it into a square shape, which is the most desirable.

Q. 23. Was it made essentially the same as the form in Plaintiff's Exhibit No. 9?

A. Generally made about the same; I have often seen these guide sides left off and three-cornered blocks put in the inside corner to preserve the square form; that is not as good, because these slats on top serve as guides to make one layer directly above another.

Q. 24. Was the advertisement on the last page of Exhibit No. 13 paid for by Mr. Clark?

Objected to as immaterial.

Q. 25. How did it come to be put in the paper and published?

A. It was not paid for; I think it was put in the paper by my directions.

Q. 26. By whose directions was the editorial in the third column of the third page?

A. That is mine.

Q. 27. Did Mr. Clark have any controversy with you about that publication; and, if so, what?

A. No particular controversy that I remember; I think he objected to it after it was published, but I don't remember the ground of his objection—the particular ground.

Q. 28. Both the editorial and the advertisement?

A. The matter connected with his system of laying up cheese—found some fault with it.

Q. 29. What led you to put those things in at that time?

A. Thought it was an improvement; new method.

Cross-examination by Mr. FEATHERSTONHAUGH:

Q. 30. Was the advertisement and editorial inserted in the paper which you have spoken of placed there with Mr. Clark's knowledge?

A. I don't think it was.

Q. 31. Had you had no conversation with him prior to the insertion of those articles?

A. I had conversations with him prior to that; I had become acquainted with him before that.

215 Q. 32. Had you had any conversation with him about the articles themselves prior to the insertion?

A. Had not.

Q. 33. Were the articles written by you individually?

A. I can't remember about that now; I wrote a good many articles for the paper, but I can't remember now which I wrote.

Q. 34. The articles there inserted state facts, do they not?

A. I presume they do.

Q. 35. Do you know when they first came to the knowledge of Mr. Clark?

A. I know very nearly.

Q. 36. When?

A. At the Michigan State fair; I think I carried the first paper there that he saw; I had a paper of it sent on to me, and I carried it to the Michigan State fair with me.

Q. 37. Was that fair in September of that year?

A. I believe so.

Q. 38. Have you read and examined the Holbrook patent 117,075, and do you understand the invention described therein?

A. I have, and I think I understand it.

Q. 39. Have you also read and examined patent 187,100?

A. I have.

Q. 40. And do you understand the same?

A. I do.

Q. 41. Please compare the methods of operation and the construction and use of the apparatus described in these patents, and state whether or not they are similar to or dissimilar from each other, and give your reasons for any opinion you may express.

A. There is very little similarity between the two so far as relates to the pomace holder; the Holbrook patent has a crib, which is usually

made about four feet square and three feet deep; in this crib the cheese is built up by using racks similar to the racks used in the Clark patent, but the cloths are used in a different manner; in the Holbrook patent the cloth is first hung on four sides of the crib, inside of it, reaching from the top to the bottom; the racks are made of proper

216 dimensions to go inside this crib. In laying up a cheese a crib was placed on the press-bed and the rack was put in it at the bottom on the press-bed or platform. Another cloth is laid over the rack, pomace is put in, say, four inches deep or six inches deep, and another cloth placed over the pomace, and then another rack and cloth and pomace and cloth, and so on, until the crib is filled. In pressing the pomace extends out to the ends of the racks and against the cloth, which rests against the crib slats, the uprights which form the inside of the crib. In pressing the cheese the principal part of the cheese is forced down the outer side of the cheese and the cloths rubbing against the upright sticks causes a great amount of friction, and also causes the cloths to be torn and worn out rapidly, and also has a tendency to force the frame part in a horizontal direction, allowing the pomace to extend out beyond the ends of the rack, and this rubbing on the crib forces the pomace and cloth up over the ends of the rack sticks, which closes up the channel or outlet for cider. In the Clark system these troubles are avoided; no crib is used; the form is smaller than the racks and each layer of pomace is enveloped in cloth, and the outer edges of the cloth and pomace is always retained within the circumference or outer ends of the racks. The meaning of the phrase in the Clark patent, "and thus secure uniform pressure on its entire area and to avoid all tendency to break the pomace frames or racks," I think, relates to the fact that by the form we are enabled to fill in the pomace so that it is in even thickness, and when spread by pressing the racks together it still comes between the racks and the even thickness is maintained, and "to avoid all tendency to break the pomace frames" is meant that these racks in the old method, the Holbrook method, are apt to catch on the sides of the crib and be broken. This system of Clark's avoids all such danger. I might further state that the cloth and pomace being retained within the outer edges of the rack it is impossible for it to close up the outlets formed by the rack, as is the case with the crib.

217 Q. 42. State whether or not you find in the Holbrook patent the combination of devices which are specified in the claim of the Clark patent.

A. There is not a combination of such devices; in the Holbrook patent a rack is used similar to the Clark patent; that is really the only device that is used in the combination in the Clark patent; cloths are used, but they are used in a different manner; the rack is similar and amounts to the same thing, although it is made double, the same number of sticks being used in the two directions crossways.

Q. 43. I asked you if there was a combination of devices in the Holbrook patent such as is specified and claimed in the Clark patent.

A. There is not.

Q. 44. Are you by yourself or others actively engaged in introducing into use in this country the invention or apparatus described in this Clark patent; and, if yes, during what time have you been so engaged, and whether or not you have been extensively so engaged?

A. I have been engaged in introducing this system, I might say, extensively.

Q. 45. What success have you had in the matter as compared with other systems in use?

A. I have put many hundred of them into use among cider makers, explaining every other device that I am acquainted with, and I have never known yet one of them to be thrown out after it had been used long enough for the operator to become familiar with its operation.

Q. 46. Have you taken out patents yourself for new inventions?

Objected to as immaterial.

A. I have.

Q. 47. Are you familiar with any patents for new inventions which you have not taken out yourself?

A. I think so.

Q. 48. State whether or not, in your opinion, this Clark patent contains such a description of the invention described therein as will enable any person familiar with the art to which said invention belongs to successfully make and use said invention.

218 Objected to on the ground [that] witness is not properly shown to be qualified.

A. I think it does; I think most any cider maker would have no difficulty in making this pomace-holder from the description given in the patent.

Q. 49. Please examine the model, Complainant's Exhibit No. 9, and state whether or not, in your opinion, it contains the invention made known in Clark's patent 187,100, and state also how it compares with the description of the apparatus which is described in said patent.

A. It is a model that represents the patent, represents the description contained in the patent, and in all its essential features it is like the description.

Recross-examination by Mr. FEATHERSTONHAUGH:

Q. 50. Is the description which you have just given of laying up a cheese on the Holbrook patent derived from actual experience which you have had in laying up cheese under that patent or from other sources?

A. Well, I have read the patent and have given my description principally from that. Perhaps a part of my information may be derived from actual experience, being perfectly familiar with that system of laying up a cheese and understanding its advantages and disadvantages thoroughly, but I have attempted to make my description conform to the description in that patent of laying up a cheese by the Holbrook system.

Q. 51. The description which you have just given is mainly derived from the drawings and specifications under that patent?

A. I don't say they are mainly derived from that. The knowledge gained of that system has been derived from many sources, but I have read the patent, and my description conforms pretty nearly. I have read the system as described in that patent. A lawyer might pick out some technical difference, but generally the description is correct. For instance, there are two or three ways of laying up a cheese in a crib. Some people don't hang the
219 cloths around the sides of the crib; most everybody does. I think the description in this indicates the cloths should be hung around the sides of the crib.

Q. 52. After the cheese is laid up in the Holbrook patent are not the cheeses entirely enveloped in the cloth?

A. Taken as a whole they are, but as single layers they may not be. The cloths that are put on the inside of the crib extend from top to bottom, and square cloths cover the surface of the racks. This square cloth is not always sufficient to envelop the layer; some use cloths large enough to envelop it and some do not.

Q. 53. After the cheese is laid up there are cloths upon the sides of the cheese and on the top of the cheese?

A. Generally there are; if they are long enough to reach they are thrown over the top so as to make a covering cloth extend in connection with the hanging cloth over the whole surface of the pomace.

Q. 54. Is there any essential difference between the two racks used on the two patents?

A. If you speak of the pliable rack there would be an essential difference; if you speak of the stiff racks there is no essential difference in the rack itself; one is made double and the other is made with several strips running across it to hold the rack sticks together which form the body of the racks. It matters not whether two or three or four or five of those cross-sticks practically —, though the more there is used the stronger the rack is made, and the larger the rack is the more is necessary.

Q. 55. Will you please give the difference between the form and the crib, as you have termed them?

A. The form is made the depth of one layer; the crib is made the depth of all the layers, and thus entirely outside of the cheese.

Q. 56. The comparison which you have just drawn between the two patents is between the Holbrook patent and Clark's last patent, is it not?

A. Yes, sir.

Q. 57. You have drawn no comparison between the Holbrook patent and Clark's first patent?

A. No, sir; I have drawn no comparison between them; the first patent has not been referred to.

220 Q. 58. Would the comparison be the same?

A. Not at all.

Q. 59. Did Mr. Clark's patent use the crib or form?

A. Used the crib; that is very similar to the Holbrook patent.

Redirect examination by Mr. WARD:

Q. 60. When you said the racks of the Clark system were similar to the racks of the Holbrook system did you mean the construction of the racks or the use of the racks?

A. I mean more especially the function they perform; the construction is different; the Holbrook rack is made of perhaps 30 or 40 slats, each an inch wide, laid down and 30 or 40 more laid on top of them crosswise and nailed together so that the cross sticks of the rack cover the whole surface of the rack except the channels, which are left open for the cider to run in; in the Clark rack one side of those slats are held together by a certain number of cross-pieces, it does not matter how many, two in a small rack would be sufficient, and in a larger rack three or four or five, according to the size of the rack.

Q. 61. Do not the Clark racks perform functions that the racks in the Holbrook patent do not perform?

A. Yes; they do in the combination, but still taken simply as a rack they are constructed in practically the same manner and used practically for the same purpose. When combined with the form and cloth according to the Clark system they not only do what the Holbrook rack does, but they also contain the edges of the layers within their limits and press these edges the same as they do the middle of the cheese, while in the Holbrook system the edges of the cheese goes outside of the ends of the racks and away from them; in that respect the Clark rack performs a function that the Holbrook patent does not; that is only when taken in combination with the other elements of its patent.

Q. 62. What means have you taken for making yourself acquainted with the cider-making business in the American States and
221 with the appliances and apparatus and methods employed for cider making? And in your answer please explain how long you have employed such means.

A. I have traveled among cider makers very extensively, and have employed agents, I think, every year since I have been in the business to travel, and have required those agents to report to me a list of the cider makers and of all different systems in use and different kinds of machinery; I have so thoroughly canvassed the business that we have now a list of something like 1,800 to 2,000 cider makers in the State of New York, and generally know just what they are using in their business in regard to machinery. Ever since we commenced business in 1870—I might say in 1871; we did very little in 1870; I think I had two agents out in 1870 and quite a number out in 1871, and traveled myself considerably in 1870, and from that out.

Q. 63. You mean you personally and your agents visited the different cider makers whose names you obtained?

A. Yes, sir; most of them; in some sections of the country we have canvassed the territory very thoroughly; I will say in the State of New York we have visited nearly all of the cider makers, both myself and my agents, and have for years sent agents out with horses

and buggies, so that they could go through every county and visit every cider mill, and it has been the calculation to visit every cider mill in the territory I had under my immediate control, which, generally speaking, comprised the State- of New York, New Jersey, and Pennsylvania.

Q. 64. Are your agents in the habit of reporting to you the apparatus and appliances and methods to be found in use in different sections of the country?

A. Yes, sir.

Q. 65. State whether or not you, directly or indirectly, knew of any such system or combination—any apparatus for cider presses or forming cheese therefor as are described in said Clark patent previous to the communication of his invention to you by Mr. Clark.

Objected to upon the ground the question calls for hearsay evidence.

222 A. I never knew of or heard of this system described in said patent until communicated to me by Mr. Clark.

Q. 66. How many cider makers do you suppose there are in the State of New York?

Objected to upon the ground that it calls for the witness' supposition and not what he knows.

A. I estimate the number at about 2,000.

Q. 67. When was that system communicated to you by Mr. Clark, to the best of your recollection?

A. In 1874.

Q. 68. What month?

A. I can't tell you.

Q. 69. Was that previous to the Saginaw fair?

A. Yes, sir; some little time previous.

Q. 70. Do you recollect the fair at Ohio?

A. Yes, sir.

Q. 71. Was it previous to that fair?

A. Yes, I think it was; I think it was several months previous.

Q. 72. Had you never read such descriptions of such patent in any circulars you had or had received?

A. Had not.

DANIEL HARRISON, being duly sworn in behalf of the complainant, testifies as follows:

Examined by Mr. VAN SANTVOORD:

Q. 1. What is your business?

A. Cider maker I suppose is the most correct answer; we have a store here in New York, but we are manufacturers mainly.

Q. 2. What is your place of business in New York?

A. 45 Harrison street.

Q. 3. How long have you been in that business?

A. I have been acquainted with it longer than I have been in it;

I have been acquainted with it all my life; my father was a cider maker before me.

Q. 4. How long have you been in business yourself?

A. I have been the manager of our present cider works for 24 years.

Q. 5. What is the style of your company or concern?

A. The name of the firm?

Q. 6. Yes, sir.

A. Harrison & Co.

223 Q. 7. Are you extensively engaged in the business?

A. Quite extensively; not as large perhaps as some, but quite extensively; it is our business—the manufacture and sale of cider and vinegar—our only business.

Q. 8. Where did your father carry on business before you?

A. New Jersey, a place now called Montclair; originally, in the time father was a cider maker, it was West Bloomfield, Essex county.

Q. 9. You made it your business to look up the different improvements in cider making and the apparatus for it?

A. Yes, I think so; I think we are perhaps up to it now; we were a little slow perhaps in availing ourselves of improvements—a little inclined to be old fogy, I think we were, originally.

Q. 10. Look at patent 187,100, and state if you have examined this thing and understand its construction.

A. Yes; I have looked at it.

Q. 11. And the construction and operation of the apparatus described in it?

A. Yes.

Q. 12. Look at the model, Complainant's Exhibit No. 9, and state if you have examined the thing and understand that—the construction and operation.

A. Yes, sir.

Q. 13. Have your company any apparatus like that described in this model in active use in your business?

A. Yes, sir.

Q. 14. How many?

A. Perhaps they may vary from that, in that ours is a double platform and this represents a single platform, the principle being the same; we use a double platform; we have five.

Q. 15. How long have you used that apparatus—that kind of apparatus—in your mills?

A. If my memory isn't faulty, we used our first press of that character in 1876.

Q. 16. What do you say in regard to the availability of that system and apparatus, shown in model No. 9, as compared with other methods of making cider?

A. It is the best I have ever known.

224 Q. 17. Have you any information as to the opinion of other persons engaged in the same business, besides yourself, on the subject in regard to the merits of this method—the method described in that model compared with others?

A. From my acquaintance with cider makers my impressions

have been that this style of press for laying up and pressing pomace has met with more favor than any other thing that I ever knew.

Q. 18. Has that opinion been expressed to you by more than one establishment?

A. Yes, sir.

Q. 19. How many?

A. Oh, perhaps I couldn't answer that correctly. It is a matter that often comes up in conversation with different cider makers, and this style of press stands in general favor with them. I think I can state that without exception that as far as my knowledge extends it is preferred to any other.

Q. 20. What are some of its advantages?

A. In my case its main advantage consisted in increasing more than fourfold the capacity of my mill. I make cider. I am enabled to make cider. For instance, when I first commenced making cider my capacity—we never run nights; we always run daytimes—my capacity was 350 bushels of apples per day. I increased that to about 600 in 1875, laying up my cheese in the old-fashioned method. Now I can use 3,500 bushels of apples every day by means of this.

Counsel for the defendant objects to the counsel for plaintiff pursuing this course of inquiry, on the ground it is new testimony and not in rebuttal.

Q. 21. How does this model—Exhibit No. 9—compare in its construction and the system shown in it with the description in this patent 187,100?

A. I don't see any difference in the model. Perhaps the draft is not quite as clear as it might be, but I don't see any difference.

Q. 22. State whether or not you would be able from the description in this patent 187,100 to construct and operate successfully the apparatus described in it.

A. From the draft and description?

Q. 23. From the whole thing.

[A.] Yes; I should think so.

Q. 24. You also think that if you were to construct an apparatus after this patent you would construct an apparatus like that Exhibit 9?

A. I think so.

225 Q. 25. State whether or not, in your opinion, any person who is skilled in the art to which this invention belongs would be able successfully to make and use the apparatus described in this patent in making cider and building up the apparatus and use it in making cider; whether any person skilled in the art to which this invention belongs would be able to follow the description of the patent and make the apparatus and use it successfully.

A. Yes, sir; without doubt.

Q. 26. From whom did you first obtain the apparatus which you obtained under this system of making cider?

A. From the Boomer & Boschart Press Company, Syracuse.

Q. 27. In what year was that?

A. If my memory is not faulty it was 1876.

Cross-examination by Mr. FEATHERSTONHAUGH:

Q. 28. You say that the draft is somewhat defective. In what respect, will you please state, that it is defective?

A. Did I use the word defective?

Q. 29. Not quite as clear as it might be.

A. The only feature about it that I noticed was that it seems to represent only half of the form or frame instead of the whole as you are looking at it in this way, the lower portion of it; that is the only thing that I noticed about it.

Q. 30. How many cross-pieces does it show there upon the slats upon the draft?

A. I don't see that it shows more than one of them; it appears to me that we are looking at the thing in a different position; if you turn this you see only one piece.

Q. 31. Looking at the rack so as to show the end of the cross-pieces how many pieces does it show the rack has?

A. It may not show any; the cheese itself don't show any when the pomace is laid in there.

Q. 32. Does not the draft only show there are two cross-pieces?

A. No, I don't know that it does; my understanding of that would be, as I look at it there, this cloth that is lying here is supposed to be filled with pomace; this pomace is supposed to be soft, and when it is filled with pomace you couldn't see those pieces.

226 Q. 33. It covers the end of the rack?

A. Not the end of the rack, but as the pomace is pressed down it extends.

Q. 34. Have you read the specifications in that patent?

A. Yes; I have read those.

Q. 35. Would you be enabled by following the directions given in the specifications exactly to operate the press—lay up a cheese?

A. I think so.

Q. 36. Have you used the pliable rack in connection with the rack in your business, or do you use the stiff rack?

A. We are now using the stiff rack. I am not positive whether the first purchase we made was the pliable racks or not; I am not sure about that, because I have not charged my mind with it.

Q. 37. Was the press which you first purchased similar in all respects with the model before you?

A. I don't know as to that; there may or may not have been slight differences. The principle, I think, was the same; I do not call to mind any radical difference; there might be a slight difference.

Q. 38. Were there two different kinds of racks with that press—pliable and stiff racks?

A. That I don't know; my memory would be not. I think I had either the one or the other, yet I never charged my mind with it; I used whatever they were selling at the time. When I bought that press I bought it from these parties with the best facilities they had at the time, and I can't tell as to that.

Q. 39. I ask you to read that description of laying up a cheese on

the second column and see if it directs to use continuously the form upon each rack, or whether it omits the form after laying down the first rack.

A. You mean whether this description omits it?

Q. 40. Yes; whether that description omits it.

A. I understand it commencing with this: "A cloth (E) large enough to envelop the layer is then laid on the rack inside the frame and opened out to receive the pomace, which is 'struck level' with the girts of the frame, after which the cloth is folded over
227 the pomace and the frame is lifted off." I should understand that to repeat that performance with every layer.

Q. 41. Does the specification say so?

A. No, sir; I don't think it says so in just so many words; I think by inference it teaches it plainly.

Q. 42. You would, then, draw an inference from the general language that you would repeat the use of the form?

A. Yes; I think the instructions are clear on that.

Q. 43. Is your knowledge of laying up a cheese derived from your experience as a cider maker, or from the specification?

A. Those specifications I don't think I ever saw before perhaps a week ago; my attention was never called to them. I had been familiar with this using of the form many years ago, and the specifications from my own experience would either teach me that.

Redirect examination by Mr. VAN SANTVOORD:

Q. 44. What do you consider to be the meaning of the description in said patent which I now quote: "The next and succeeding racks are in like manner laid on the first and filled up." What is filled up?

A. I understand the wording of that to mean that the frame or form which is used as a guide is placed on the rack, the cloth placed upon it, and the form so placed upon the rack is filled up level, after which the cloths are turned over and the form removed while another rack is being put on; that is the way we proceed in laying up our cheese.

Recross-examination by Mr. FEATHERSTONHAUGH:

Q. 45. You never did at any time lay up a cheese from the specifications now before you?

A. No, sir; I don't think I ever saw these specifications until since I returned home this fall from this fall busjness.

228 Redirect examination by Mr. VAN SANTVOORD:

Q. 46. As I understand it, the method that you use in laying up cheese with the apparatus which you say you recognize in this model, Complainant's Exhibit No. 9, corresponds and agrees with the description of this patent. Am I correct?

A. Yes; I think so.

JOHN CLARK recalled by complainants.

Examined by Mr. WARD:

Q. 1. When did the State fair at Saginaw commence—the 26th annual fair—according to your best recollection?

A. The State fair at Saginaw in 1874 commenced either on the 15th or 22d of September.

Complainants rest.

Adjourned.

United States Circuit Court, Northern District of New York.

THE CLARK POMACE HOLDER COMPANY
against
WILLIAM H. FERGUSON.

THE CLARK POMACE HOLDER COMPANY
against
LEONARD WALLEY.

THE CLARK POMACE HOLDER COMPANY
against
WILLIAM VAN AUKIN.

I, James M. Ruso, being duly sworn, do hereby certify that
229 the foregoing is a correct transcript from my stenographic notes of all of the testimony taken before me as notary public and special examiner on behalf of the complainant in the above-entitled causes, at my office, in the city of Albany, on the 17th day of September, 1881; the 20th day of October, 1881; the 12th day of November, 1881; the 8th day of September, 1882, and the 28th day of October, 1882, and at 41 Park Row, in the city of New York, on the 20th day of December, 1882.

JAMES M. RUSO.

Sworn to before me this 29th day of January, 1883.
FREDERICK W. CAMERON,
Commissioner of Deeds, Albany City, N. Y.

230 *Defendant's Testimony.*

U. S. Circuit Court, Northern District of New York.

THE CLARK POMACE HOLDER COMPANY
agt.
WILLIAM H. FERGUSON.

THE SAME *agt.* LEONARD WALLEY.

THE SAME *agt.* WILLIAM L. VAN AUKEN.

It is hereby consented and agreed between the parties to the above-entitled actions that Edward W. Rankin be the examiner *pro hac vice* to take the testimony on behalf of the several defend-

ants in the above-entitled actions respectively, with all the rights and powers of an examiner regularly appointed; and that the testimony so to be taken, or so taken before him, be the testimony of the said several defendants in said several causes respectively; and that an order to that effect be entered, if necessary, without notice.

Dated Albany, N. Y., Nov. 29, 1881.

WM. H. KING,
Solicitor for said Defendants.
W. E. WARD,
Solicitor for Complainants.

Circuit Court of the United States, Northern District of New York.

THE CLARK POMACE HOLDER COMPANY
agt.
WILLIAM H. FERGUSON.

STATE OF NEW YORK,
City and County of Albany, } *ss:*

I, Edward W. Rankin, having been appointed special examiner herein, do solemnly swear that I will faithfully and fairly discharge my duties as such special examiner, and make a just and true report according to the best of my understanding.

EDWARD W. RANKIN.

Subscribed and sworn to before me this 5th day of December, 1881.

[L. S.]

EDWIN G. DAY,
Notary Public, Albany Co., N. Y.

Circuit Court of the United States, Northern District of New York.

THE CLARK POMACE HOLDER COMPANY, Complainant,
agt.
WILLIAM H. FERGUSON, Defendant.

231 Testimony for the defendant taken before Edward W. Rankin, notary public, as special examiner, under the sixty-seventh rule of equity as amended, to be used at the final hearing in above-entitled cause.

Present: Walter E. Ward, as counsel for complainant; William H. King, as counsel for defendant, and William H. Ferguson, defendant, in person.

WILLIAM H. FERGUSON, being duly sworn, doth depose and say, in answer to questions, as follows:

1 Q. State your full name, residence, and occupation.

A. William H. Ferguson, New Scotland, Albany county, New York; farmer.

2 Q. Are you the defendant in this case?

A. Yes.

3 Q. Do you make cider?

A. Yes.

4 Q. For how long a time have you been making cider?

A. I have been making cider twenty years.

5 Q. For how many years have you made cider for yourself?

A. Since some time in the '60's, after the close of the war.

6 Q. Have you been and are you still acquainted with the appliances which cider makers use in making cider?

A. Yes.

7 Q. Please state what appliances you used for making cider in 1874.

A. I used particularly that season a press purchased from Mr. Griffes, with ratcheted screws, the cheese being laid up in alternate sections, a rack placed between each section or layer, and the pomace enveloped or filled a cloth between.

8 Q. What was the manner in which you laid up your cheese?

A. I could not succeed with that plan; it was not large enough; we finally adopted a plan which made the cheese twice as large, using two racks at the side of each other, the pomace being filled in a cloth as before, a form made of four strips of inch boards one inch thick, six inches wide, the form being less in area than the
232 combined size of the racks; the pressure was then applied and the cheese squeezed out.

9 Q. Do I understand you to say, then, that you used in combination a rack, form, and cloths or cloth in laying up your cheeses in the manner in which you made cider in 1874?

A. Yes; I used each one of those three elements in 1874.

10 Q. You used all three of those elements in laying up your cheeses in 1874?

A. Yes; I did.

11 Q. Look at Complainant's Exhibit No. 1 and state whether or not you laid up your cheeses in that manner in 1874.

A. I do not think I did.

12 Q. Did you first lay down a rack, place thereon a form that was smaller than the rack, then a cloth inside of the form, then the pomace inside of the cloth, then turn up the edges of the cloth over the pomace, then remove the form, place upon top of the cloth holding the pomace another rack, upon which you placed a form, inside of which you placed another cloth, filling said cloth with pomace, turning up the edges of the cloth over the pomace again, removing the form laying up your cheese in that manner?

A. That was the way we proceeded, except that the first rack was attached to the floor of the press and remained there.

13 Q. Then that is the only difference between the manner in which you laid up your cheese in 1874 and the manner in which cheeses are laid up in this Complainant's Exhibit No. 1; that the lower rack was fixed to the floor or platform?

A. The first rack was fixed to the platform, and the subsequent racks were placed side by side so as to extend beyond the cheese. I did not use this in 1874; I did use this in 1875.

14 Q. What did you use in 1874?

A. The racks and cloth and form.

15 Q. Of whom did you purchase that press?

A. Of Mr. Griffes, of Schenectady; I think his name was Nathaniel Griffes.

233 16 Q. Where is Mr. Nathaniel Griffes?

A. He is dead; he died in August, 1881; since this suit was commenced.

17 Q. How long had he used this press?

A. Four years; it was built in 1870.

18 Q. Are you using a form now in making cider?

A. No.

19 Q. Have you been at any time using a form in making cider since the commencement of this suit?

A. No; I have not used a form in making cider since the commencement of this action nor since I received a notice that it was an infringement. This notice was received by me, I think, in March, 1881; the suit was begun in June, 1881.

20 Q. Do you know Mr. George B. Boomer, a witness, of Syracuse, who has testified in this case?

A. Yes.

21 Q. Please state whether or not you have had any conversation with Mr. George B. Boomer in relation to the invention described in letters patent to John Clark, No. 187,100, in evidence, and marked as Complainant's Exhibit No. 1, and upon which this suit has been brought; and, if your answer is yes, please state when and where such conversation took place and as nearly as you can such conversation.

A. Yes, I did; the first conversation was in New York city, No. 15 Park Row, 1876, in October. We spoke in relation to this patent. I said that I understood that parties were collecting licenses in Albany county. His question was "What do you people mean to do about it?" My answer was, "If we find this right and square we mean to pay." He said it was correct, and he supposed that every one infringing would have to pay license.

22 Q. This was before any patent had been obtained, was it not?

A. Yes.

23 Q. Did you state all of this conversation?

A. That is the substance of it, as far as relates to the patent.

234 24 Q. What is the date of the patent 187,100?

A. February 6, 1877.

25 Q. Did you have any conversation with Mr. George B. Boomer, of Syracuse, in June, 1881, in relation to this invention covered by letters patent 187,100?

A. Yes.

26 Q. Please state what and where it was.

A. It was in Syracuse, at the Boomer and Boschert Press Company's works. The remark that I remember in particular was that he, Mr. Boomer, had made a suggestion to Mr. Clark about the manner of making Clark's racks. They were made pliable. He had suggested that they be made stiff racks.

27 Q. (By Mr. Clark.) Do you mean the John Clark, the patentee, or alleged patentee, of this invention?

A. Yes.

28 Q. And by the racks you mean the racks mentioned in the alleged patent of Mr. John Clark, No. 187,100, do you not?

A. Yes.

29 Q. Please state whether or not the form, rack, and cloths, as used by you in 1874 and subsequent thereto, were used with the permission or the consent of John Clark, the alleged patentee of letters patent 187,100, or of any one representing him as agent, assignee, or owner of his invention and letters patent, or of any one interested, either directly or indirectly, in the inventions mentioned and described in letters patent 187,100, or of said alleged letters patent?

(Objected to by complainant's counsel on the ground that the witness has already testified that in 1874 he did not use the racks, form, and cloths in the manner described in letters patent 187,100, and on the further ground that the witness testified that he used the racks, form, and cloths in a different manner in 1874 than he did in 1875 and subsequently.)

A. I had not heard of John Clark or anything of his patents.

235 30 Q. Is this (showing two small racks offered in evidence, marked Defendant's Exhibit No. 1, of December 5, 1881), the model, the rack you used in 1874, and which you say you placed together side by side?

A. Yes; these were the racks which I bought of N. Griffes with my press, and which were pretty old when I bought them, and as they wore out they were replaced by this rack (model shown witness, offered in evidence, and marked Defendant's Exhibit No. 2, December 5, 1881). This is the model of a form that I used (offered in evidence and marked Defendant's Exhibit No. 3, December 5, 1881). These models are made upon the scale of three inches to the foot and are accurately made.

Cross-examination by complainant's counsel.

31 Q. What time in year 1874 did you buy this press?

A. About the 23d day of November, 1874. I bought it one day and paid for it the next; there is a receipt for it.

32 Q. What appliances came with the press for squeezing out the juice?

A. The press with its appliances was not complete. There came the press frame, screws, platform, racks, cloths, and crib.

33 Q. Describe what the cribs and racks consisted of, and describe how they were used.

A. On the platform was a stationary rack, as described before. There was an upright hoop or crib set upon this rack. There was a cloth laid inside this crib so as to cover the bottom and sides. The pomace was shoveled upon this cloth to the depth of three or four inches evenly over the whole surface. The cloths were then spread over this pomace and a rack placed upon, it as described before. A

cloth was spread on top of the rack, the pomace filled in as before, a cloth spread, and a rack placed on that, and so on, until the cheese was completed.

34 Q. How was this cheese pressed down?

236 A. The cheese was finished off with a rack on top; planks were placed upon it, the follower on that; the screws were then applied to the follower and the pressing then commenced.

35 Q. Where was the crib that you spoke of during the pressing?

A. The crib was round about the cheese, supporting it.

36 Q. When was this crib taken off?

A. When the pressing was finished the crib was taken off.

37 Q. What did this crib consist of?

A. It consisted of upright standards bound together with a strong wooden frame, clasped at the corner with strong iron hinges.

38 Q. Did you take it down and put it up in sections?

A. I could do either; I could take it partly down or altogether.

39 Q. What kind of racks were used in this crib?

A. The same as those of which Defendant's Exhibit No. 1, of December 5, 1881, is a model.

40 Q. Look at Complainant's Exhibit No. 2; is the device used similar to the one described there?

A. I should say it was similar to the engraving, but mine was fastened with hinges.

41 Q. Had you another press before you got this?

A. Yes.

42 Q. How did you lay up cheese on that press?

A. The usual custom was the custom in practice there for years; a form was placed upon the platform of the press; there was straw spread evenly inside of the form with the ends projecting; pomace was filled in and struck level with the top of the form; the ends of the straw were turned over and fastened down by the small portions of the pomace on the ends of the straw; slats were laid across the top of the layer, the form was placed upon the end of these projecting slats, straw placed in the form, and pomace in that, as before.

43 Q. How was this form made?

237 A. A good representation of it is Defendant's Exhibit No. 3, December 5, 1881.

44 Q. How many layers did you usually put in a cheese?

A. Usually about six or seven.

45 Q. How was the cheese taken down?

A. From the top; one layer at a time.

46 Q. Did you ever cut off the edges and lay up over again?

A. Very seldom; I think I did once, but it wouldn't pay.

47 Q. Did you ever try it more than once?

A. I think I did.

48 Q. Why did you not do it more?

A. Because I preferred to take the whole cheese down, soak it, and put it back again.

49 Q. It wasn't because you couldn't cut it down?

A. I think I could have cut some of them down.

50 Q. What did you mean by soaking them?

A. To put liquid upon them.

51 Q. What kind of liquid?

A. Sometimes water, sometimes cider.

52 Q. How often did you use cider?

A. Very often.

53 Q. How long did you use straw in making cider?

A. I do not think that I used it after 1874.

54 Q. How long did you use this arrangement that you bought of Griffes?

A. I used it the remainder of that season and part of the next.

55 Q. These are the only two methods in which you made cider in 1874?

A. Yes.

(Defendant's counsel objects to this answer being taken on the ground that the witness has not at any time during his examination in any way stated or intimated that he used both of these methods in 1874, and that if the defendant was misled by the question of counsel, or did not understand the question asked, he has a right to explain his answer at this present time, and defendant's counsel so advises him.)

238 56 Q. Do you wish to explain your answer?

A. Yes.

57 Q. Will [you] please explain?

A. In answering this question I did not wish to convey the impression that an experimental test or slight use of a method or system was a permanent use.

58 Q. Did you use straw, during 1874, in making cider?

A. Yes.

59 Q. Did you use the crib that you have already explained during the year 1874 in making cider?

A. Yes.

60 Q. Were you at the Centennial exhibition, at Philadelphia, in 1876?

A. Yes.

(Defendant's counsel now notifies complainant's counsel that he is now entering upon new matter, not in any way connected with the direct examination, and he thereby makes this witness his own witness.)

(Plaintiff's counsel states that he intends to show that this defendant learned how to make cider in this manner subsequent to the time stated by the defense.)

(The defendant's counsel here desires that complainant's counsel state the time when he claims that we learned this process of making cider.)

(Defendant's counsel also notifies complainant's counsel that he makes this witness his own witness, and cannot, at any future time examine any person as a witness to contradict his testimony.)

(The defendant's counsel has asked the complainant's counsel to state the time.)

(Complainant's counsel says that he has no statement to make. The complainant's counsel considers the record sufficient for all purposes.)

61 Q. Did you see a Boomer and Boschert cider press at the Centennial exhibition?

A. Yes.

62 Q. Did you see it work there?

A. Yes.

239 63 Q. Was the improvement described in Complainant's Exhibit No. 1 (said exhibit shown witness) used on that press?

A. Yes.

64 Q. What month was that?

A. October, 1876; the last week in October.

65 Q. Was it within the same month and the same year that you had the conversation with Mr. Boomer?

A. It was on my way home; it must have been the day before election.

66 Q. You are sure that you cannot be mistaken as to the year?

A. I am positive.

67 Q. What time did you get into New York from the Centennial?

A. On Saturday night.

68 Q. How long did you stay in New York?

A. I stayed in New York till Monday night.

69 Q. When did you see Mr. Boomer; what day of the week?

A. I suppose it must have been on Monday; the whole thing is wrong; I am mistaken as to the time; I would not have known it if I had not discovered it in my diary.

70 Q. When was it that you saw Mr. Boomer at 15 Park Row?

A. In August, 1880; I recall the circumstance by ordering an elevator.

71 Q. Then this whole conversation about collecting royalties for a patent before it was issued was wrong?

A. It was not wrong; we had such a conversation.

72 Q. The patent was issued long before that conversation, was it not?

(Defendant's counsel objects to the use of the words letters patent, as it has not been proved that letters patent for the invention claimed have ever been issued. On the contrary, the record shows that no valid letters patent could ever have been or be issued for said invention, and that counsel has no objection to the question if the word alleged is used before the words letters patent.)

A. The patent was issued in February, 1877.

240 73 Q. Did you ever have any other conversation with Mr. Boomer, at No. 15 Park Row, New York, than the one you stated in your direct examination?

A. Yes, sir.

74 Q. Did you, at the conversation you have testified of, or at any

other time, state to Mr. Boomer, in words or substance, that you were free to acknowledge that you learned to make cider by the Clark system at the Centennial exhibition?

A. I do not recollect of giving Clark the credit of learning me to make cider in any improved way.

75 Q. How long did you use the racks (Defendant's Exhibit No. 1, December 5, 1881) side by side, as you have testified to?

A. I could not say. They were constantly giving out and being replaced by whole ones, all in one piece.

76 Q. Was a cheese laid up in your mill during the year 1875 with all whole racks, similar to Defendant's Exhibit No. 2, December 5, 1881?

A. I can't say.

77 Q. Were any cheeses laid up in 1876 with all whole racks?

A. I can't say. Some of the racks similar to Exhibit No. 1 of defendant, December 5, 1881, were used up to 1878, and there are some pieces of them about the mill now.

78 Q. Did you see Mr. Boomer at Park Row, New York city, in 1876?

A. I had an impression that I did, but it can't be so.

79 Q. Did you see him anywhere in New York at all in 1876?

A. I think the first acquaintance I had with him was when I ordered the elevator in 1880.

80 Q. When did you have your first notice that you were infringing?

A. Near the first of April; in March, 1881.

81 Q. In what way had you been laying up cheeses previous to this notice?

A. Cloth, racks, and form.

82 Q. In what way were they used?

A. As described by me before.

83 Q. As described in Plaintiff's Exhibit No. 1?

A. Very much the same.

241 84 Q. Did you make cider in that way in 1880?

A. Yes.

85 Q. In 1878?

A. Yes.

86 Q. In 1879?

A. Yes.

87 Q. In 1877?

A. Yes; substantially the same; some of the racks were double.

88 Q. Did you make any cider after you received this notice, in the spring of 1881, in any way?

(Objected to by defendant's counsel as wholly immaterial.)

A. There was one cheese, perhaps two, of second pressing; I think that was squeezed in March.

89 Q. Was that all?

A. Yes.

90 Q. Was that made in this system?

A. I could not tell.

91 Q. In your conversation that you testified to in Park Row, New York, with Mr. Boomer, was this patent in suit discussed?

A. Yes; it was a small part of the conversation.

92 Q. Did Mr. Boomer inform you in that conversation that he was agent for the Clark Pomace Holder Company for the State of New York?

A. I think not.

93 Q. Do you take the National Press?

A. Yes.

94 Q. Have you ever seen this patent described in that as a patented article?

A. The advertisement say- it is patented.

95 Q. How long have you taken the National Press?

A. Since about the time it was first published, January 1, 1880.

96 Q. Have you ever received a circular from the Boomer and Boschert Company describing their press?

(Objected to by defendant's counsel as immaterial.

A. Yes, sir; I have received circulars since 1876 yearly.

97 Q. You have seen this improvement described in that circular since 1877, have you not?

242 (Objected to by defendant's counsel as immaterial.)

A. Yes.

98 Q. And you also saw the claim in these circulars that this improvement was patented, did you not?

(Objected to by defendant's counsel as immaterial.)

A. I think I did.

99 Q. You knew, then, before March, 1881, that you were using an apparatus on which it was claimed there was a patent?

(Objected to by the counsel for defendant as irrelevant and immaterial, and also that defendant's counsel states that he is your witness, and that you are on dangerous ground.)

A. I knew that they claimed it, but I didn't believe that they had any ground for their claims. I based my belief on the knowledge of former use. I would not have been fool enough to use it if I had not known that parties had used this device for years before the date of the patent.

100 Q. Then you testified to what was not true in your direct examination when you said that the first notice you had that there was a patent upon the apparatus you were using was in March, 1881?

(Objected to as improper in form and in every respect, and as impertinent, by counsel for defendant.)

A. I said that that was the first notice I had from Mr. Ward.

101 Q. Are you not now using machines upon which there is a patent without a license?

(Counsel for defendant objects to the question as improper and

immaterial, and states that counsel for complainant may ask about patents in this case, but not anything else.)

A. Not to my knowledge.

102 Q. Who did you buy your cider press of?

(Objected to by counsel for defendants as improper and immaterial, and as laying foundation for other suits, and counsel
243 advises the witness that he need not answer, except as to the press that he has bought of Mr. Griffes.)

(Complainant's counsel states that the only object of this part of the cross-examination is to impeach the credibility of the witness.)

(Defendant's counsel states that the complainant's counsel has made this witness a witness in behalf of the complainant, and under all the rules of evidence he is bound by the testimony of his witness, and cannot in any way impeach his credibility.)

A. I bought a press of Mr. Griffes.

103 Q. Of whom did you buy the press you have used the last season?

(Objected to by defendant's counsel on the same grounds as above.)

A. I bought it of Robert Butterworth, Trenton, N. J.

104 Q. Do you use upon this press what is known as a double platform?

(Objected to by counsel for defendant on the same grounds as last above.)

(Complainant's counsel requests the examiner to put down the statement made by defendant's counsel that he advises witness not to answer this question, and if he answer it he does it at his own risk.)

(The examiner is unable to state the words used.)

(The defendant's counsel states that he did not use the words stated by the counsel for the complainant.)

A. Yes.

The further examination of witnesses in the above-entitled cause adjourned until Monday, December 12th, 10 a. m.

[L. S.] EDWARD W. RANKIN,

Special Examiner and Notary Public in and for the County of Albany, N. Y.

244 Circuit Court of the United States, Northern District of New York. In Equity.

THE CLARK POMACE HOLDER COMPANY, Complainant,
aq't
WILLIAM H. FERGUSON, Defendant.

Examination of witnesses for the defendant, taken before Edward W. Rankin, special examiner and notary public, pursuant to adjournment, on the 12th day of December, 1881, at 10 a. m.

Continuation of the testimony of WILLIAM H. FERGUSON, defendant:

105 Q. Who put up your press for you in 1874?
A. I put it up myself.
106 Q. Was the press complete which you bought of Griffes?
A. Not in all its parts.
107 Q. What was lacking?
A. I can't tell, really.
108 Q. Was the crib and racks all complete?
A. I think I have said before there were defects in it, and I put it in working order.
109 Q. Did you do this all yourself?
A. I bossed it and did a good share of the work.
110 Q. Who else worked for you that fall?
A. I can't tell; I have so much help that I can't tell, looking back.
111 Q. Are you sure that you had any man to work for you?
A. Yes.
112 Q. Did you have any carpenter in fixing up the press?
A. No, sir.
113 Q. Did you have any men help make cider?
A. Yes.
114 Q. How do you know you did?
A. I employed men every day about that time, before and since.
115 Q. Was that the first year you employed any men to work for you in making cider?
A. No.
245 116 Q. When was the first you employed any men to work for you in making cider?
A. I can't tell.
117 Q. Do you keep any books?
A. Yes.
118 Q. Would those books show who worked for you from 1874 on to the present time in making cider?
A. They would, probably.
119. Do you know for certain whether they would or not?
A. I suppose those books would show, because I always keep men's time that work for me and amount of what money I pay them.
120 Q. Are you certain that those books would show who worked for you in 1874?

A. I can produce the books and they will show for themselves.

121 Q. Can you answer whether those books will show or not?

A. I do not mean to answer until I look at the books.

122 Q. Can you answer positively whether those books will show the men who worked for you in 1874 or not?

A. No.

123 Q. Is there any other way you could tell who worked for you in 1874 besides those books?

A. I suppose so.

124 Q. Have you those books with you?

A. No.

125 Q. What other way can you tell who worked for you in 1874?

A. Call a meeting of Ferguson Brothers and make it out at the meeting.

126 [Q.] How do you mean—any other way than simply memory?

A. No; by comparison.

127 Q. You still state positively that you cannot remember any man who worked for you in 1874?

A. I did not say so.

128 Q. Can you name any man who worked for you in 1874 in making cider?

A. I think so.

129 Q. Who?

A. I might say John Gardineer, Frank Ferguson, Charles Barton, William Ferguson, Jr.; I do not recollect others; I can't say that those all worked that year either.

246 130 Q. Can you name any one who did work for you in 1874, positively?

A. I suppose it to be correct to say the first two named above.

131 Q. Is Frank Ferguson your brother?

A. No.

132 Q. Where do these two persons reside now?

A. John Gardineer resides in the town of New Scotland; Frank Ferguson resides in the city of New York.

133 Q. Do you know his street number?

A. No, sir.

134 Q. Do you know his occupation?

A. Not positively.

135 Q. What do you think?

A. Clerk.

136 [Q.] In what kind of business?

A. Has been furniture—hardware; I don't know now.

137 Q. Will your books show for whom you made cider in 1874, also in 1875 and 1876?

A. Yes, sir; with a few exceptions.

138 Q. Did you make cider for your neighbors during those years, to the best of your recollection?

A. Yes, sir.

139 Q. Can you remember any farmers that brought apples to your mill in 1874?

(Objected to by Mr. King, of counsel for defendant, as immaterial and irrelevant; and counsel for defendant gives notice that, at the proper time, he shall make a motion to strike out all the testimony taken this 12th day of December, as immaterial and irrelevant.)

A. I suppose so.

140 Q. Can you remember who worked for you in 1875?

(Same objection.)

A. I can refer to the books of that year and tell.

141 Q. Do you know that Mr. Boomer claims a patent on the double platform that you are using?

(Counsel for the defendant objects to the question as im-
247 material, incompetent, and irrelevant, and adds that we are not trying infringement of other patents.)

A. He has told me that he claimed patents on double platforms.

142 Q. He claimed that, before you put your double platform in, to your knowledge?

(Objected to by counsel for defendant, on the same grounds.)

143 Q. He so claimed before you put your platform in?

(Objected to by counsel for defendant, as above.)

A. I think I had the platform before I knew Mr. Boomer.

144 Q. From whom did you purchase the platform?

(Objected to on the ground that it has been answered once in direct examination, and on the additional ground that the complainant in this action is seeking to get evidence in a matter entirely foreign to this subject-matter, with a view of bringing another action against this witness for an alleged infringement of an alleged patent owned or patented by Mr. Boomer.)

A. The parts came from different parties.

145 Q. Did the principal parts of the platform come from Robert Butterworth?

(Same objection and statement by counsel for defendant.)

A. Which do you call the principal parts?

146 Q. Do you know that the principal parts came from Robert Butterworth?

(Question withdrawn.)

147 Q. State from whom the different parts of this platform was purchased?

(Same objection and statement by counsel for defendant.)

(Counsel for defendant further adds that, in order to bring
248 the subject of examination before the court so that the rights of defendant and of this witness may be clearly established by a decision of the judge in this case, and also that it might be known whether or not the trial of an action for an infringement of an alleged patent not contained in this action can be had herein, he advises this witness to refuse to answer the question of com-

plainant's counsel in relation to any matter appertaining to the platform of the press upon which it is stated or is claimed there is a patent which Mr. Boomer now owns or claims an interest in.)

(The complainant's counsel reasserts that the object of this cross-examination is solely to impeach the credibility of the witness.)

(Defendants' counsel states that upon the last day of taking of testimony in this case, and while this witness was being examined, he gave notice to complainant's counsel that inasmuch that he, complainant's counsel, had entered upon new matter not in any way connected with the direct examination of this witness, that he had made this witness a witness for the complainant, and that he could not thereby, at any time during the trial of this action, impeach the testimony of this witness.)

(Defendants' counsel further adds that, inasmuch as complainant's counsel after such notice coutinues the examination of this witness upon such new matter, that the statement of complainant's counsel that the purpose of his examination to-day is to impeach the credibility of this witness cannot now avail him anything. Defendants' counsel further adds that, in order to bring this subject of the manner of examination before the court immediately upon a question of contempt for the refusal of this witness to answer such questions, he again advises this witness in the same manner as heretofore.)

A. Under advice of counsel, I refuse to answer.

148 Q. When did you commence to use the double platform?

249 (Objected as immaterial and incompetent.)

A. Early in 1876.

149 Q. Did you use it in 1876, in the same form as now?

(Objected to as incompetent and immaterial, and the same advice is given.)

A. No, sir.

150 Q. In June, 1880, did you read the following extract from the National Press (copy of National Press shown witness), found on page 44 of National Press, of the issue of June, 1880, under the head of Infringements of Patents: "And we hereby notify Robert Butterworth and all purchasers of his machinery that we shall follow every infringement of our patents on double platform, or indicators, to the extreme extent of the law." Signed George B. Boomer, vice-president of the Boomer and Boschert Press Company?

(Objected to by defendant's counsel as immaterial, incompetent and irrelevant, and not in any way connected with the direct examination of this witness, and defendant's counsel advises the witness as he has already advised.)

A. I adhere to his advice as before.

151 Q. (Letter shown witness.) Is that in your handwriting?

(Defendant's counsel objects to question until complainant's counsel describes letter. Defendant's counsel requests complainant's

counsel to describe letter so it may be on record. Objected to also as immaterial, the letter having been addressed to one George B. Boomer, not to the complainants nor to any officer of said company as such.)

A. Yes.

152 Q. Letter dated from Voorheesville, April 25, 1881, to G. B. Boomer, offered in evidence, signed by W. H. Ferguson, especially that part thereof commencing with words: "This is the way, etc.," to the end.

250 (Objected to by counsel for defendant on ground of incompetency, for the reason that said letter is not directed to complainant, nor to any officer or agent thereof as such, but to an individual.)

Marked U. S. C. C., N. D. N. Y. Clark Pomace Company ag't William H. Ferguson. Complainant's Exhibit No. 2, Dec. 12, '81. E. W. R., Sp. examiner and notary.

153 Q. Did you write this letter, consisting of three half sheets, with the exception of the lead-pencil writing at the top of the first sheet, dated Voorheesville, April 26, 1881, addressed to Mr. Dunning, signed by W. H. Ferguson?

(Objected to on the ground of incompetency, said letter not having been addressed to complainants, or any officer or agent thereof as such.)

A. It is in my handwriting.)

(Marked for identification "Dec. 12, 1881. E. W. R., Ex.")

154 Q. Did you write this letter, consisting of two half sheets, dated Voorheesville, April 27, 1881, to Mr. N. E. Ward, signed the first half sheet W. H. Ferguson, the second half sheet W. H. F.? The defendant's counsel has requested complainant's counsel to let him look at letter and complainant's counsel has refused.

(Defendant's counsel objects to question on the ground of incompetency and irrelevancy.)

(Complainant's counsel states he does not at the present time intend to offer the letter in evidence, but simply wishes it marked for identification.)

A. Yes.

(Letter marked for identification "December 12, 1881. E. W. R., Sp. Ex. and notary.")

251 155 Q. Letter, consisting of two half sheets, shown witness, dated Voorheesville, May 1, 1881, addressed to Mr. W. E. Ward and signed W. H. Ferguson—did you write this?

(Objected to as incompetent, irrelevant, and immaterial.)

A. Yes, sir.

(Letter marked for identification "Dec. 12, '81. E. W. R., Sp. Exam. and notary.")

155½ Q. How long have you lived at Voorheesville?
A. I was born there.
156 Q. Have you lived there ever since?
A. Yes, sir.
157 Q. What has been your business?
A. Principally farming.
158 Q. What else?
A. Small fruits and cider making.
159 Q. Have you done business in any other place or places?
A. No, sir.
160 Q. You have never been engaged in any kind of business except the two kinds you stated?
A. Not to any extent.
161 Q. Have you to some extent?
A. I have insured one man in an insurance company.
162 Q. A life insurance company?
A. Yes, sir.
163 Q. Is that the only business outside of farming, small fruits, and cider?
A. The only business to any extent.
164 Q. State all the different kinds of business you have been connected with in any way?
A. I have done carpenter's work, made sleighs, and can do wheelwright work; can take down and set up an engine and run an engine; I have coopered barrels; can do cooper work. I can refine cider. I have sold twenty or twenty-five Histories of the War of the Rebellion. I have done and can work as a traveling agent, and have assisted in selling a patent right.
165 Q. When were you engaged in selling patent rights?
A. In 1865.
252 166 Q. Where?
A. In this State.
167 Q. In any other State?
A. No, sir.
168 Q. What was the patent right which you sold?
A. Jones' water elevator.
169 Q. How long were you engaged in that business?
A. Not long.
170 Q. How long?
A. Not long.
171 Q. A year?
A. Perhaps one month; not certain.
172 Q. Do you swear it was not two months?
A. I do not think the active work was over one month.
173 Q. Who owned this patent?
(Objected to as immaterial.)
A. I think his name was Campbell.
174 Q. Who owned the patent right to this State?
A. I don't know.
175 Q. In what manner did you proceed? Did you sell territory or the machines themselves?

(Objected to by counsel for defendant as immaterial and irrelevant.)

A. Both ways.

176 Q. What territory did you sell?

(Objected to as immaterial and irrelevant.)

A. Rensselaer and Columbia counties.

177 Q. Did you own this territory, Rensselaer and Columbia county?

(Objected to as immaterial and irrelevant.)

A. I have answered before.

178 Q. In what way were you paid for this territory that you sold?

(Objected to as incompetent, irrelevant, and immaterial.)

A. I was to receive commission, but finally paid the money back that I had received from the men; sold to — and bore the loss myself of several hundred dollars.

179 Q. How did this loss occur?

253 (Objected to as immaterial.)

A. A fire burned up over $300 worth of manufactured goods at Chatham Four Corners. The parties sold to did not reside in the counties, and had not the ability to sell their rights. It was a loss to them. I paid them back their money at a heavy loss to myself, and a great deal of care and trouble, and stood free with them and every other one with whom I was connected in business; it cleared my conscience.

180 Q. Did you receive a large amount of notes for territory sold under this patent?

(Objected to by defendant's counsel as immaterial, irrelevant, and incompetent.)

A. I think I received some notes.

181 Q. Were those notes ever collected?

(Same objection as above by defendant's counsel.)

A. No, sir.

182 Q. Were any of these notes pronounced illegal by the court?

(Same objection as above by defendant's counsel.)

A. The patent was good and true, as far as I know. The notes were *bona fide* and good notes; the parties who gave them were not fitted for the work; the notes never came in any court; were never presented to any lawyer for his opinion upon them. I was simply told by these men that they could not sell their elevators—their rights—and so destroyed the notes by fire; worked six years to pay the money; succeeded, and stood free with every man—debts paid.

183 Q. Did you destroy the notes yourself?

A. Yes.

Redirect examination by Mr. KING, the counsel for defendant:

184 Q. In answer to the forty-sixth question on cross-ex-
254 amination, "Did you ever cut off the edges and lay up over again," you answered, "Very seldom; I think I did once, but it would not pay." Please explain why it would not pay.

A. It was better to have the press free from the cheese as soon as possible.

185 Q. Any other explanation?

A. Our manner of proceeding was to take the cheese down from the top, saving what we could of the straw, and placing the removed pomace into a large vat, into which was poured several casks of vinegar stock, consisting of the first and last cider from the pressings; when about full, the whole mass intermingled or mixed together, and pressed out nights and spare times.

186 Q. Have you at any time seen the device described in the alleged letters patent 187,100, on which this action is brought, bearing a stamp, imprint, engraving, or label, upon which had been printed, stamped, painted, cut, or engraved the words "Patented, February 6, 1877," or any other words which would import or would convey to the mind of any one that such device had been patented?

A. I have seen these devices at the Boomer and Boschert Press Company's works, in Syracuse, N. Y., and never saw any mark or device to tell who were the makers or who was the alleged patentee.

187 Q. Did you see the date of any patent, or the mark of any patent, or the word patented on it?

A. No, sir; I did not.

188 Q. The office of the complainants is at the same place as Boomer and Boschert Press Company, Syracuse?

(Objected to by Mr. Ward, of counsel for the complainant, that the defendant cannot go into any new matter on the redirect examination.)

A. I saw Mr. Dunning there, and he was at their office, the office of Boomer and Boschert Press Company; I refer you to the circulars of the Boomer and Boschert Press Company.

255 189 Q. Did the two small racks which you have testified you first used when laid side by side extend beyond the form which rested upon them?

A. They did extend beneath and beyond the form, as you can readily see by comparing the models of the form and racks now in evidence.

190 Q. In answer to question No. 176, in cross-examination, "What territory did you sell?" you answered "Rensselaer and Columbia counties;" do you desire to correct such answer? And if you do, please make such correction now.

A. In thinking of this matter, I am now inclined to think that the actual sale were Columbia and Dutchess counties.

WILLIAM H. FERGUSON.

Subscribed and sworn tc before me this 13th day of December, 1881.

EDWARD W. RANKIN,
Special Examiner and Notary Public in and for the County of Albany and State of New York.

GEORGE CASPER, being duly sworn, doth depose and say, in answer to questions, as follows:

1 Q. Please state your name, residence, and occupation.

A. George Casper; Bramanville, town of Cobleskill, Schoharie county, New York; post-office address, Howe's Cave; my occupation is milling, farming a little, making cider; I have a planing-mill and saw-mill.

2 Q. How long have you lived there?

A. Since 1849, with the exception of three years.

3 Q. How long have you been making cider?

A. Since the fall of 1872.

4 Q. In making cider, what have you used?

A. Racks, forms, and cloths.

5 Q. Does this model represent the device that you have used in making cider (model shown witness)?

A. Yes.

256 (Device offered in evidence, marked Defendant's Exhibit No. 1, of December 12, 1881, E. W. R., S. Ex.)

("A" is the platform, "B" is the rack, "C" the form, "D" the cloths—five in all—"E" uprights, two in number).

6 Q. Please state how you used them.

A. First, I placed the rack with a form on top, the rack extending underneath and beyond the form; then I laid on the five cloths extending outside of the form, fill the same in with pomace even full; then I folded the cloths over the pomace, laid on another small cloth, then removed the form, then placed a rack on top of the cloths, another form on top of that, and built up as before.

7 Q. When did you first begin to use the rack, form, and cloths?

A. In the fall of 1873; the last part.

8 Q. Have you been continuing to use these three since the fall of 1873?

A. Yes, sir.

Cross-examination by Mr. WARD, of counsel for complainants:

9 Q. In what manner did you lay up pomace in 1872?

A. We used cloths and a frame without the racks; we always had the two.

10 Q. In what part of the fall of 1873 did you use these three?

A. The last part of the fall, in November; we used two slats under the edge of the form before that, from the commencement.

11 Q. Explain how you used the slats.

A. We laid them across the edges of the layer of pomace, leaving the ends stick out.

12 Q. Did you then pull out these slats and lay them on top of the next layer?

A. Yes, sir.

13 Q. So that it left the layers with nothing between them except the cloths?

A. Yes, sir.

14 Q. At this time you used the cloths in the same shape
257 and the same number as represented by your model?

A. No; in the fall of 1872 we used eight cloths.

15 Q. Did you use the same form?

A. Yes, ever since I commenced up to the present time.

16 Q. Who made the first racks for you?

A. I made them myself.

17 Q. How were they made?

A. About two inches wide and half an inch thick.

18 Q. Where did you get the slats?

A. I sawed them out; we have a mill.

19 Q. Who worked for you in 1873?

A. Sylvester Hadgell.

20 Q. Is he the only man who worked for you then?

A. Yes, except my son.

21. Q. What is your son's name?

A. Francis L. Casper.

22 Q. Have you only one son?

A. Only one living.

23 Q. How old is he now?

A. I think he is twenty-two.

24 Q. Where is your son now?

A. He is at home; he makes his home with me.

25 Q. Where is Sylvester Hadgell now?

A. At Bonnaville, town of Cobleskill.

26 Q. What is his occupation?

A. A day laborer.

27 Q. Has he worked for you since 1873?

A. No.

28 Q. What means have you of being certain as to the date when you commenced using racks?

A. It was the second year that we commenced to make cider.

29 Q. Is that the only means?

A. That is enough. We commenced in 1872. I got the rods or posts at Townsend's mill in 1872 and have the bill.

30 Q. By Townsend's you mean Townsend's foundry, in this city?

A. Yes.

31 Q. Who worked for you in 1874?

258 A. A man by the name of Stevens—Daniel Stevens. He worked for me in 1873 and in 1874.

32 Q. What did he do towards making cider in 1873?

A. He helped all through, except four or five days, in laying up?

33 Q. Did any one else work for you in 1873 or 1874?

A. I do not know as I can state any one.

34 Q. Can you in 1874?

A. I think a man named James Stoner.

35 Q. Where does Stevens live now?

A. I think in the edge of the town of Middleburgh, close to the line.

36 Q. Do you know his post-office address?

A. I think it is Howe's Cave.

37 Q. What is his occupation?

A. He is a day laborer.

38 Q. Did he work for you after 1874?

A. I think he did in 1875, at nights, and I think some during the days.

39 Q. Who else worked for you in 1875?

A. A man by the name of Patterson; I believe his name was Edward.

40 Q. Any one else?

A. Palmateer and Patterson, and I think Stevens.

41 Q. State the residence and occupation of Palmateer and Paterson?

A. I cannot state where Paterson is now; Palmateer is at the cave.

42 Q. You will swear positively that you commenced the use of the racks between the layers of pomace, in the fall of 1873?

A. Yes, sir; the last part.

43 Q. You could not be mistaken as to the year?

A. No.

44 Q. And you base that entirely upon the year you commenced, because it was the second year you made cider?

A. Yes.

45 Q. And you base that entirely upon the bill you received
259 from Townsend's foundry for the iron posts?

A. Yes; and from the hands I had to work, and you can subpœna the whole neighborhood.

46 Q. If, upon investigation, it should turn out that those posts were bought in 1873, would you then conclude that it was in 1874 that you first used racks between the layers of pomace?

A. I could not answer in any other way.

47 Q. I ask an answer to question 46.

A. I could not say any other way, because I have the bill.

48 Q. I insist upon a categorical answer to question No. 46.

A. Yes; if it should turn out that way, but I do not know what good a memorandum would do if it did not show the dates. You can go to I. W. Mount's or Townsend's and find out.

49 Q. What time of the year did you get these posts?

A. About the 10th of October, 1872.

50 Q. What were these posts?

A. About two inches iron.

51 Q. Were they round or square?

A. Round, and about two inches in diameter.

52 Q. How long were they?

A. Between ten and eleven feet.

53 Q. What were they used for?

A. They connect the head beam or press beam with the bed pieces.

54 Q. What did they cost?

A. About thirty-five dollars.

55 Q. About how early in the year did you commence to make cider?

A. About four or five days from the time we got the posts—about October 18.

56 Q. Who put up the press for you?

A. I and Sylvester Hadgell.

57 Q. How much cider did you make in 1872?

A. About 1,000 barrels; I can't tell exactly.

58 Q. How much did you make in 1874?

A. About the same amount, I should think.

59 Q. What did you do in 1874 with your cider?

A. Custom make.

260 60 Q. Who did you make cider for 1874?

A. A great many.

61 Q. Name some of them.

A. Swartz—Tennis S. Swartz, Howe's Cave, N. Y.; Samuel Rickerd, Howe's Cave, N. Y.; brothers Peter and John Casper, Augustus Kilmer; I think I made for Theodore Owen; he has an orchard near by; James H. Hays, George Rickerd.

62 Q. What time of the year did you commence to make cider in 1874?

A. In August, before hop picking, betwixt the 20th and 30th, I think.

63 Q. How many presses did you use during this time?

A. I never used but one press.

64 Q. How many sets of racks did you have when you commenced making cider in 1874?

A. Some nine—eight or nine.

65 Q. When were those racks made?

A. In August, 1874—that is, the full set; some I had made in 1873 and used them.

66 Q. How many had you made in 1873?

A. Three or four, I think, was all I made that fall. It was just before we quit.

67 Q. What time did you quit?

A. About the first of December or last of November.

68 Q. Were you in Syracuse during the summer of 1874?

A. No; I have never been there.

69 Q. How many cheeses did you lay up with these racks in 1873?

A. I don't know as I could tell exactly. Before that we used loose slats in——

70 Q. How long did you use loose slats before you used racks?

A. It may have been a fortnight. We kept adding in slats.

71 Q. Did you have racks enough for a whole cheese in 1873?

A. I don't think I did.

72 Q. Were these racks that you used in 1873 the same as you used in 1874 and afterwards?

A. Yes; the same in 1874 as in 1873.

261 73 Q. You did not use any racks before the last of November, in 1873?

A. I think not till then.

74 Q. About how much cider, as near as you can tell, did you make in 1873, after you commenced to use these racks?

A. I cannot tell exactly, we were just winding up; we might have made nearly fifty barrels.

75 Q. Can you tell who you made for?

A. I do not know as I could now; different ones.

76 Q. Can you tell any one for whom you made cider with those racks in 1873?

A. I think might be Samuel Rickerd; I cannot tell positively.

77 Q. Who did you first make cider for in 1874?

A. I do not know as I could tell now; we had it down the first one we made for in that year.

78 Q. Have you books now which would show?

A. Yes, sir; we have books of each year.

79 Q. Have you those books with you?

A. I have not; the boy keeps all the accounts.

80 Q. Explain just how those racks were make in 1873?

A. Two inches wide and three or four slats across, under, nailed.

81 Q. Did they extend beyond the form on the four sides?

A. No, sir; even on the two sides with the form, and they stick out an inch and a half on the ends.

82 Q. How long did you use these racks?

A. About two years—that set—the ones I begun in 1873.

The further examination of witnesses in the above-entitled cause adjourned until Tuesday, December 13th, 10 a. m.

[L. S.] EDWARD W. RANKIN,
Special Examiner and Notary Public in and for the county of Albany, N. Y.

262 Circuit Court of the United States, Northern District of New York. In Equity.

THE CLARK POMACE HOLDER COMPANY
ag't
WILLIAM H. FERGUSON.

Examination of witnesses for the defendant taken before Edwin W. Rankin, special examiner and notary public, pursuant to adjournment, on the 13th day of December, 1881, at 10 a. m.

Continuation of the testimony of GEORGE CASPER.

83 Q. In what year was it that you made new racks?

A. I think it was in 1875.

84 Q. In what part of the year?

A. Well, we make them generally before we begin making cider, in August.

85 Q. How were these racks made?

A. About the same as the model; the model is on a scale of three inches to a foot.

86 Q. How did these racks differ from the other racks that you made in 1873 and 1874?

[A.] The first ones we made were made of slats two inches wide, and these are one inch wide.

87 Q. How thick were these slats?

A. A scant half inch.

88 Q. Why did you make new racks?

A. The others wore out; they broke.

89 Q. How long did you say you used the old ones?

A. About two or three years; with the fall of 1873 they made three years' use.

90 Q. The old racks and the new racks were on the same external dimensions?

A. Yes, sir; laid up in the same style.

91 Q. Were you at the Centennial Exhibition in 1876?

A. No, sir.

92 Q. Was your son?

A. No.

93 Q. Are you positive that it was in 1875 that you made the new racks?

263 A. I would not say certain that we made a full set in 1875; we made some in 1874 and in 1875, and fixed and added to them; we made some first of basswood and pine; these were heavy to handle and did not wash well, so we replaced them with ash and oak.

94 Q. You are certain that in 1875 you had a complete new set?

A. Yes, sir; and in 1874 also; we had the same set in 1875 as in 1874, and in 1875 we added some.

95 Q. Did you, in 1875, have a complete new set of racks with narrow slats?

A. I would not want to say that we had a set all the way through of the narrow slats, but we had most of one.

96 Q. How long did you use the racks which you made in 1875?

A. I think we used them until 1879; I think it was until 1878; I am positive of that.

Redirect examination by Mr. KING:

97 Q. What is the usual term made use of by cider makers of each layer of pomace?

A. We call them rings or layers; we call them rings.

98 Q. Of how many layers or rings is a cheese composed?

A. They go from one to ten.

99 Q. Please state whether or not the rack which you commenced to use in 1873, and subsequently thereto, extended underneath the form on all sides.

A. Well, the way I would explain it is—you see that this form is an inch thick (of which this model is a representation); then it is even on the two sides; even on the outside; and then they would stick out the other way, from the end or side of the platform, from

an inch and a half to two inches on each end; it sticks out on all sides when the form is raised.

100 Q. The form rests entirely upon the rack on all sides, does it not?

A. Yes, sir.

101 Q. Does or does not the rack extend beyond the cheese after the form has been removed?

A. It does, about an inch.

264 102 Q. State, if you can, how you came to make this rack in 1873; your whole process in arriving at the use of the rack.

A. Well, in the first place,— were by laying these slats in to hold the form; then when we got the press up, before we put the plank on, we left these pieces and laid the plank on them, and found out by doing so; in the first place, I should have said, that kept them from spreading, kept the clothes from slipping, and then we saw the cider drain out, follow the sticks that lay, and so we added more in that way; we found out that was a benefit and so we added a few more, and then we made the racks as first described; we kept improving every year, whenever we saw a benefit we improved from that time out.

103 Q. You have often had people come to your mill with small quantities of apples and make them up?

A. The first year since then we have made whole cheeses when we had apples enough; sometimes we did not have quite enough.

104 Q. Did you ever learn of the use of the rack, form, and cloths, in making cider, from John Clark, of Pontiac, Mich., the alleged patentee of alleged letters patent No. 187,100, upon which this action is brought; or from George B. Boomer, of Syracuse; or from Rufus E. Boschert, of the firm of Boomer and Boschert, Syracuse, N. Y.; or either of them before you commenced to use such combination?

A. No, sir.

105 Q. Have you ever seen, at any time, the alleged inventien mentioned and described in, and claimed by said alleged letters patent bearing any stamp, imprint, painting, mark, or ingraving, upon which were the words patented February 6th, 1877, or any words of similar import, which would imply, or convey to the mind of any one, that such device was or ever had been patented?

(Objected to by counsel for complainant on the ground that it is going into new matter.)

265 A. No, sir; I never saw any print on any of the slats or form or cloths.

106 Q. Do you wish to explain about parties who worked for you?

A. Yes, sir.

107 Q. Please explain.

A. The first year, 1872, Sylvester Hadgell worked for me; in 1873, 1874, and 1875, Daniel Stevens worked for me; Lorenzo Burner worked for me in 1876 and 1877; Patterson worked for me in the fall of 1878, and Palmateer; then Palmateer in 1879 and 1880; Ira Rickerd in 1881.

Recross-examination by Mr. WARD, counsel for complainant:

107½ Q. Were these all the men who worked for you during that period?

A. I had some men by the day; different ones.

108 Q. Please state the dimensions of the form used.

A. It is now a little narrower than it used to be.

109 Q. What were the dimensions in 1874 and in 1875?

A. The form was about six or seven inches deep then.

110 Q. How long and wide?

A. I think four feet square, outside.

111 Q. How thick stuff was it made?

A. I think it was inch stuff.

112 Q. Was it your usual practice to fill the form even full of pomace?

A. Yes.

113 Q. After the cheese was laid up and pressure applied, did not the sides of the rings squeeze out beyond even with the edges of the racks?

A. Sometimes. Some apples were mellow and rotten and gave out, spread more than others; good sound apples and the cloths clean they would not spread to amount to anything; would not come out so as to meet each other.

266 114 Q. As a usual practice, would they come out even with the edge?

A. If you set a post up I should think it just past in some presses, in some a little more.

115 Q. Did you, during the year- 1877, 1878, 1879, and 1880, receive from the Boomer and Boschert Press Company circulars of their cider-press machinery?

A. I have had circulars sent at different times from them; I do not know as I can tell certainly the years.

Redirect by Mr. KING, of counsel for defendant:

116 Q. What was your custom in laying racks—all in one way?

A. Yes; I did so because these upright posts marked "E" on model prevented them being laid in any way except that.

117 Q. What were the purpose- of those posts?

A. To keep it straight, plumb.

118 Q. How did you remove the form?

A. By pulleys—weights.

119 Q. How were the weights attached to the form, and to what part of the form?

A. On each corner a staple was driven in, a cord passed through — pulley and a hook on the end of the rope to hook in the staple, the weight on the other allowing me to raise or lower the form.

120 Q. Have you had an agent of the Boomer and Boschert Press Company call upon you in relation this alleged invented device?

(Objected to by Mr. Ward, of counsel for complainant, on the ground that it is irrelevant, immaterial, entering into new matter;

that the Boomer and Boschert Press Company have no interest in or control of this patent.)

(Defendant's counsel calls attention of complainant's counsel to the fact that in his recross-examination of this witness he asked the witness questions as to what the Boomer and Boschert Press Com-
267 pany had done, and it is now legitimate and proper to show what the Boomer and Boschert Press Company have done in addition to that of which testimony has already been given by this witness.)

(The counsel for complainants refers to question 115, in reply to statement by counsel for defendant, and further states that the Boomer and Boschert Press Company have nothing whatever to do with this patent, except as stated in the circulars there referred to.)

(Counsel for defendant moves to strike out the answer and question 115, on the statement of counsel.)

(Complainant's counsel states that these circulars will be produced in evidence at the proper time.)

(Defendant's counsel asks the complainant's counsel particularly to describe these circulars at this time, so that a record may be made of them.)

(Complainant's counsel again refers defendant's counsel to question No. 115 of this witness.)

(Defendant's counsel states that question 115, being exceedingly indefinite as to what the circulars are, he again requests defendant's counsel to make a more full and complete statement of the circulars he here refers to, in order that a record may be made of them.)

(Complainant's counsel states that there has been but one regular trade circular per year published by said company, which are the circulars here referred to.)

(Defendant's counsel then understands that the circular issued to the trade for the year- 1877, 1878, 1879, and 1880, and not any small circulars or advertisement issued during those years, respectively, is meant by the statement of complainant's counsel; that he now asks complainant's counsel if such understanding upon the part of defendant's counsel is correct?)

268 (The complainants counsel answers yes.)

A. Yes; I believe it was one of their agents; they were trying to sell me a press, one of theirs, and I told him I had a good press, as good as I needed; it did my work; and then he was looking at these slats and he said Clark claimed a royalty on them, I think, of ten dollars; says I, "How long have they used them? and I think he said in 1874 they claimed a patent on the crib. Well, I then said to him that they might fire away; that I had used mine long enough to clear me that it was mine; I told them I did not mean to be scared; he said, I see you don't scare—or something in that way; that, I think, was all that was said about the racks. I think he was there two years in succession, 1877 and 1878, I think; I think he was on the way to Middleberg looking up to sell the press.

121 Q. The Clark Pomace Holder Company never sued you?

A. No, sir.

Recross-examination by Mr. WARD, counsel for complainants:

122 Q. Did you send this letter (letter shown witness, dated Howe's Cave, April 25, 1881, addressed to W. E. Ward, signed George Casper) to me?

A. My son wrote that, I believe; my son wrote it by my directions.

(Letter offered in evidence, marked Complainant's Exhibit No. 2. Dec. 13, 1881. E. W. R., Sp. Ex. and notary. U. S. C. C., N. D. N. Y. Clark Pomace Holder *vs.* Ferguson.)

Redirect examination by Mr. KING, counsel for defendant:

123 Q. Please explain why you wrote that letter.

A. I had a conversation with Lawyer Cromer; I told how long I had been using the racks and cloths and form all together, and he told me it did not make any difference; it was my business to
269 have a patent in two years; then he told me there was no hope for me; that I could not get rid of paying, and that was the cause of my getting my son to write the way he wrote it; then we met here, I think, the 7th day of May, and I found out different. This was after this letter was written. Lawyer Cromer lives in Barnayville with his father and does business at Cobleskill. I do not know where his office is.

124 Q. Where did you meet and who told you differently?

A. We met at the office of defendant's counsel, in Albany, and I learned differently after stating the case to him, and I did not think it worth while to call on complainant's counsel.

GEORGE CASPER.

Subscribed and sworn to before me this 13th day of December, 1881.

[L. S.] EDWARD W. RANKIN,
Special Examiner and Notary Public in and for the County of Albany and State of New York.

DANIEL STEVENS, being duly sworn as a witness for defendant, did answer, in reply to questions of defendant's counsel, as follows:

1 Q. Please state your name, residence, and occupation.

A. Daniel Stevens; I live in a place called Acker's Hollow, about three miles from Howe's Cave; I am burning cement this season at Howe's Cave.

2 Q. How long have you been living near Howe's Cave?

A. I was born and brought up near there, and have always lived near there.

3 Q. Do you know Mr. George Casper, now present?

A. Yes, sir.

4 Q. How long have you known him?

A. Ever since I have been old enough to know any one.

5 Q. Where did he live in 1872 and every year subsequent thereto?

A. Bramanville, Schoharie county, N. Y.

270 6 Q. In 1873 did you work for Mr. George Casper?

A. Yes, sir.

7 Q. What was the nature of your employment while in his employ? What did you have to do?

A. I worked on the saw-mill in the spring, on the cider mill in the fall.

8 Q. In what manner did you assist Mr. Casper in making cider in the fall of 1873?

A. In helping him lay up his press, washing cloths, washing rack sticks.

9 Q. Laying up cheeses?

A. Yes; that is what I meant when I said laying up the press.

10 Q. In what manner did you lay up press or lay up cheeses, in 1873, at Mr. Casper's cider mill?

A. He had something like this: we first laid down a rack, put the curb on; we put cloths on each side all around, then we filled it with the pomace, laid our clothes over, hoisted our curb, and put another rack on, and went through with the same performance as before.

11 Q. What do you mean by the curb—the form?

A. Yes; this (placing his hand on form marked "C" on model, marked Defendant's Exhibit No. 1 of December 12, 1881) is what I called a curb.

12 Q. How did you raise the form or the curb, as you call it?

A. We had weights on each corner.

13 Q. How were the weights connected with the form?

A. With a rope; they were fastened on one end, and the other ends were fastened to the corners of the form.

14 Q. Then, I understand you to say that you used the form, racks, and cloths at Mr. George Casper's cider mill at Bramanville, Schoharie county, N. Y., in making cider in 1873?

A. Yes, sir.

Cross-examined by Mr. WARD, counsel for complainant:

15 Q. Did you ever work for Mr. Casper before 1873?

A. Yes, sir.

271 16 Q. When did you first work for him?

A. I do not know as I can tell exactly; I think it was somewheres in 1866 or 1867.

17 Q. Where did he live then?

A. Bramanville, the same place that he does now.

18 Q. What did you do then, when you worked for him?

A. Cleaned clover seed; cleaned out saw-mill, planing-machine.

19 Q. How long did you work for him at that time?

A. Three seasons.

20 Q. State what three seasons?

A. I think it was 1867, 1868, and 1869.

21 Q. Are you positive about those three years?

A. No, sir; I am not.

22 Q. Did you ever work for him before those three seasons?

A. No, sir.

23 Q. Where did you work in 1870?
A. I worked at Howe's Cave.
24 Q. Who for?
A. Eli Rose.
25 Q. What to do?
A. Worked in stone quarry.
26 Q. Where did you work in 1871?
A. Howe's Cave, part of the season.
27 Q. Who for?
A. Eli Rose, the same man as in 1870.
28 Q. Where did you work the rest of the season?
A. I worked among farmers; different places round the rest of that season.
29 Q. Where did you work in 1872?
A. I think I worked part of that season in Howe's Cave, for Eli Rose, the same man as before.
30 Q. Are you positive of that?
A. I couldn't say exactly; I think I did.
31 Q. Who else did you work for in 1872?
A. John Casper.
32 Q. Where does he live?
A. East Cobleskill.
33 Q. What did you work at?
A. On a farm.
34 Q. Where did you work the next year?
A. The next year I worked for George Casper.
272 35 Q. Where did you work in 1874?
A. I worked for George Casper part of the season—spring and fall.
36 Q. Did you work at cider making in 1874 for George Casper?
A. Yes, sir.
37 Q. Where did you work in 1875?
A. Part of the season at Howe's Cave.
38 Q. Did you use ropes and pulleys on the press at George Casper's in 1873?
A. At the last end of our cider making.
39 Q. What do you mean by the last end of the cider making?
A. Towards the last end.
40 Q. Can you be more definite?
A. I think I answered it correctly; I do not know how I could answer it any different than towards the end.
41 Q. Did you use ropes and pulleys on one cheese?
A. Yes; we used them all the way through.
42 Q. Do you mean all the way through the season?
A. No, sir; all the way in laying up the press.
43 Q. How many rings did you usually make to a cheese?
A. Seven.
43½ Q. Did you use ropes and pulleys to raise the form in laying up a cheese of seven rings in 1873?
A. Yes, sir.

44 Q. Was that cheese laid up in the manner that you described on your direct examination?

A. Yes, sir.

45 Q. With a rack between each layer, each ring?

A. No, sir.

46 Q. Did you receive any sign from Mr. Casper or any one in the back part of this room before answering that question?

A. No, sir.

47 Q. How many racks did you have in 1873?

A. I think there was four.

48 Q. How long were those racks used in 1873?

A. I don't know as I can tell exactly; about a month, I think.

273 49 Q. What time in the year did you commence to make cider in 1873?

A. I think it was the last of August or the first of September—somewhere about that.

50 Q. How did you lay up cheeses the first part of the season?

A. We used the form, cloths, and we had three sticks, slats, one on each side and one through the middle.

51 Q. How long did you make cider in that way?

A. I don't know as I can tell; it was up to November some time; the first of November.

52 Q. How late in the season [of] 1873 did you continue making cider?

A. I can't tell exactly; it was somewheres up to the first of December.

53 Q. Who made these racks?

A. Mr. Casper.

54 Q. Did he make them all in one day?

A. I can't say; he made them while I was gone away.

55 Q. Were they all made when you returned?

A. Yes, sir; what we used that fall; four.

56 Q. How long were you gone?

A. Five days.

57 Q. Where were you gone to?

A. Catskill.

58 Q. What for?

A. To work in a stone quarry.

59 Q. Did you work in a stone quarry in Catskill during those five days?

A. Yes, sir.

60 Q. Who did you work for?

A. I do not know as I can tell the man's name; I have forgotten.

61 Q. In what month was that?

A. I think it was the fore part of November.

62 Q. How did you come to leave Mr. Casper for five days, in the midst of cider making, and then go back there again?

A. We did not have many apples at that time, and I expected to stay longer when I went; I didn't like the place, so I came back.

63 Q. Whereabouts in Catskill was this stone quarry located?

A. I do not know as I can tell; it was the first time I was there, and I went right to the quarry, and that was the only place I did go.

64 Q. How did you know where to go?

A. There were two other fellows with me.

274 65 Q. Who were they? State their names, occupation, and residence.

A. Minor Scrum was one; he lives at Howe's Cave now; he works there in the stone quarry and mills; Andrew Prill was the other; he lived about a mile from Howe's Cave, north; he is out West now, I could not tell where he is.

66 Q. How did you go down the river?

A. On the cars.

67 Q. Was the river frozen?

A. No, sir.

68 Q. Are you positive that it was not the latter part of November that you went down?

A. Yes, sir.

69 Q. Were the pulleys and ropes also fixed to cider press when you returned?

A. No, sir.

70 Q. How long after you returned was it that they were put on?

A. It was not but a short time; I could not tell how many days it was; it was but a very few.

71 Q. Were any cheeses of seven rings each pressed out after you returned?

A. Yes, sir; I think there was.

72 Q. How do you know that Mr. Casper made these racks while you were away?

A. Because he said he did; they was not all finished when I came back.

73 Q. How many were finished?

A. I do not know as I can tell.

74 Q. About how many cheeses were laid up with these four racks on, after you returned?

A. I don't know.

75 Q. How many do you think?

A. I couldn't tell.

76 Q. Do you think as many as three?

A. Yes; we lay up as many as three or four a day some days.

77 Q. Were apples more plenty after you returned?

A. Yes, sir.

78 Q. Were these same racks used in 1874?

A. Yes, sir; there were more of them then.

275 79 Q. All alike?

A. I think they were about the same thing.

80 Q. How were they made?

A. In three pieces, the first ones—one on each end and one in the middle, and the slats nailed across.

81 Q. How many slats were nailed across?

A. I couldn't tell; I don't know as I ever counted them.

82 Q. When did you commence making cider in 1874?
A. I think it was in August—the latter part of August?
83 Q. Were these same racks used in 1875?
A. I don't think they were.
84 Q. What were used in 1875?
A. He had some new ones made.
85 Q. In what did they differ from the ones of 1873?
A. The slats wasn't so wide.
86 Q. What is the man's name for whom you work now?
A. Eli Rose.
87 Q. How long have you been to work for him?
A. I commenced working for him January 3, 1881.
88 Q. Who did you work for in the year 1880?
A. I don't know as I can tell now.
89 Q. Who did you work for in the year 1879?
A. I worked for John and Peter Casper.
90 Q. What relation are they to George Casper?
A. They are his brothers. In 1880 I worked for G. W. Guernsey eight months.
91 Q. Where did you work the other four?
A. I began to work for Guernsey in April and worked till the middle of December, and then I went to work for Rose.
92 Q. State the residence and occupation of J. W. Guernsey.
A. He is a farmer, and resides at East Cobleskill, Schoharie county, N. Y.
93 Q. Where did you work in 1878?
A. I worked for John and Peter Casper.
94 Q. In 1877 where did you work?
A. Same place.
276 95 Q. In 1876 where did you work?
A. I think I worked at Howe's Cave that season for Eli Rose.
96 Q. Where did you work in 1875?
A. I think in the summer season I worked at Howe's Cave
97 Q. Will you swear it was just three years from the time you quit working for George Casper the first time to the time when you commenced working for him again?
A. No, sir.
98 Q. It might have been four years?
A. No, sir.
99 Q. Explain what you mean.
A. It was just two years.

DANIEL STEVENS.

Subscribed and sworn to before me this 13th day of December, 1881.

[L. S.] EDWARD W. RANKIN,
Special Examiner and Notary Public in and for the County of Albany and State of New York.

The further examination of witnesses in the above-entitled cause

adjourned until Thursday, the 22d day of December, 1881, at 10 o'clock in the forenoon, at the office of said special examiner, 31 North Pearl street, Albany, N. Y.

[L. S.] EDWARD W. RANKIN,
Special Examiner and Notary Public in and for the County of Albany, N. Y.

Circuit Court of the United States, Northern District of New York.
In Equity.

THE CLARK POMACE HOLDER COMPANY
against
WILLIAM H. FERGUSON.

Examination of witnesses for the defendant, taken before
277 Edward W. Rankin, special examiner and notary public, taken pursuant to adjournment, on the 12th day of January, 1882.

ALEXANDER SELKIRK, called as a witness for defendant, and being first duly sworn, did testify as follows, in answer to questions:

1 Q. State your name, residence, and occupation.

A. Alexander Selkirk; age, fifty; reside in Albany, and am solicitor of patents.

2 Q. Please state what advantages and facilities you have heretofore had by which you are able to investigate, judge, and determine respecting the variations or differences and resemblances or similarities in mechanical structures and in new and patented inventions?

A. In the practice of my profession for the past fifteen years I have had many occasions to compare alleged new inventions with patented inventions for determining wherein they were similar or different; and also have had many occasions to make searches in reference to alleged inventions; and also to examine and compare patents and machines with other patents to determine whether or not there exist any infringements; and have also been frequently called upon to testify before the courts in reference to subject-matters relating to patents and patented articles.

3 Q. I hand you a certified copy of letters patent No. 187,100, granted to John Clark February 6th, 1877, for improvement in cheese formers for cider presses, and marked "Plaintiff's Exhibit No. 1, J. M. R. Please examine same and state if you understand the so-called invention shown and described therein.

A. I have examined the letters patent, "Plaintiff's Exhibit No. 1," referred to in the question, and I believe I understand the construction and arrangement of the parts or devices shown and described in said letters patent, although the specification is very faulty and not so clear and as sufficient as it should or might be.

278 4 Q. In you opinion could a skilled mechanic construct and operate the improvement in cheese formers for cider presses upon an examination of the drawings and a reading of the specifications in letters patent marked "Plaintiff's Exhibit No. 1?"

A. I believe a skilled mechanic could from the drawings and specifications construct the cheese former as illustrated as described in that patent Exhibit No. 1 and operate the same.

5 Q. Examine model marked "Plaintiff's Exhibit No. 9, J. M. R.," with the cheese former shown and described in letters patent No. 187, 100 (Plaintiffs Exhibit No. 1), and state how you find said model (Plaintiff's Exhibit No. 9) to compare with the cheese former illustrated and described in letters patent marked "Plaintiff's Exhibit No. 1."

A. I have examined the model Exhibit No. 9 and compared the same with the cheese former shown and described in the letters patent, Exhibit 1, and find that the said model in some of its parts is substantially the same as some of the parts shown in the drawings and described in the specifications of the said patent, Exhibit No. 1; I also find that in respect to other parts the model is materially different from what is shown and described in said Exhibit No. 1.

6 Q. Will you point out and state specifically wherein lays the similarities and differences you have stated you find existing in said Plaintiff's Exhibits Nos. "1" and "9" respectively as you understand them, and give your reasons therefor?

A. In letters patent, "Exhibit 1," there is shown and described the lower framework of a cider press and its bottom, and also sections of the vertical posts of the press; in the model, Exhibit 9, I find the same parts of the press substantially; in the patent the drawings show and the specifications describe racks "C,"
279 which racks are shown substantially in the model; in the patent is shown and described cloths "E" large enough to envelop layers of pomace. In the model, Exhibit 9, corresponding cloths are shown, which cloths are adapted to envelop layers of pomace. Here all similarity of parts shown and described in the patent, Exhibit 1, and model, Exhibit No. 9, ceases to exist. In the patent, Exhibit No. 1, in the drawings, figure "2," is illustrated and the specification describes what is termed in the patent "a guide-frame 'D,'" which guide-frame is represented by a cross-sectional view in said figure "2" of the drawings, and is merely referred to in the body of the specifications as being laid on the racks "C," and having their "bottom girts so spaced apart that they will not extend out to the full length of the rack on which they rest." The patent contains no specific description of the parts which compose this guide-frame "D," or the arrangement of the same with one another, but leaves it to the individual examining the patent to wholly rely on the drawings, which drawings are clear enough for a skilled draughtsman to understand when read and examined in connection with the drawings in figure "1" of said patent. To better and more fully describe and make clear the form of construction of the guide-frame "D" and its arrangements of parts I have added to the perspective, in figure "1," of the drawings in an uncertified copy of the Clark patent No. 187,100 (which is substantially the same as the drawings and specifications in "Plaintiff's Exhibit No. 1"), so that the said perspective view is made to illustrate the form of construc-

tion of the guide-frame "D" mentioned in the specifications of the patent, "Plaintiff's Exhibit No. 1," and the arrangement of its parts with each other, and with the other parts of the cheese former and press, which is in harmony and agreement with the cross-sec-
280 tional view shown in figure "2" of the patent, "Plaintiff's Exhibit No. 1." This addition to figure "1" I have made in red lines. With this explanation I will proceed to describe the guide-frame "D" in patent, Plaintiff's Exhibit No. 1.

Mr. King, of counsel for defendant, here offers in evidence an uncertified copy of drawing and specification, forming part of letters patent No. 187,100, dated February 6, 1877, issued to John Clark for an improvement in cheese formers in cider presses.

Marked Defendant's Exhibit No. 1 of January 12, 1882. E.W. R.

(Objected to by Mr. Ward, of counsel for complainant, as immaterial, irrelevant, and not correctly representing either "Plaintiff's Exhibit No. 1" or "Plaintiff's Exhibit No. 9," the model. The guide-frame "D" is composed of two boards or planks marked in the additional drawing with red letters "Z Z," in figures Nos. 2 and 1, of the drawings in Exhibit No. 1 of January 12, 1882, and the cross-bar or beam marked with red letter "Y" in the same figures. These boards or planks, "Z Z," termed "girts" and "bottom girts," in the patent, "Plaintiff's Exhibit No. 1," are set on edge at near the ends of the rack "C," and at a distance from each other, and extend across rack "C" from its top rail, red letter "X," at one side, to top rail, red letter "X," at the opposite side of said rack; these boards or plank "Z Z" are so arranged that their direction of length will be in the same direction as the slats "S S" (red letters) of rack "C," on which the guide frame rests; arranged transversely with the side pieces or "girts," "Z Z," is the bar or beam "Y," which bar or beam rests on the top edges of girts "Z Z" at about the middle of their length, with its outer ends projecting over the same to a short distance. In giving this description I have marked the reference letters with red ink while making the description.)

281 (Counsel for complainant, Mr. Ward, objects to this testimony on the ground that the witness is describing his own drawing, and not the drawing of any part of it as represented or covered by patent No. 187,100, and as irrelevant and immaterial.)

Witness continues:

I would here remark that as there is nothing in the drawings in complainant's patent, Exhibit No. 1, to show the horizontal extension of width or thickness of the piece I have marked "Y," in red letters, in Exhibit No. 1, of January 12, 1882, it may be that the said piece is made in the form of a plank set edgewise instead of a beam, as shown by red lines in Fig. "1" of the last-mentioned exhibit. There is nothing in either the drawings or specifications of patent "Complainant's Exhibit No. 1" to indicate that the piece, red letter "Y," is permanently secured to the girts "Z Z" (in red letters); what dotted lines "*d*," in figure No. 2, in Exhibit No. 1, of January 12, 1882, indicate I cannot say, though I am of the opinion that the

said dotted lines indicate stiffening or tie rails, which are shown by red dotted lines "Z," in figure one, in said exhibit; my reason for this opinion is that if the piece which I have marked "Y" is a beam, as represented in figure "2," such beam would not be convenient, on account of its size and weight, to be readily and often moved; and if it serve the purpose of a "blocking piece," or a "pressure bar" for the follower "W" (in red letter) to work against when the pressing mechanism of the press is being operated, in such a case the piece "*y*" would not be secured to the girt "Z Z," but would merely rest on said girt, in which case it would necessitate the employment of tie rails, red letters "*r r*," secured at the outer end of girt "Z Z," and extending from one to the other, as indicated by red dotted
282 lines "Z" figure "1," to hold said girts in the vertical positions shown in that figure and also in figure "2"; and if piece "Y" is only a plank set upon edge, then, for the same reason, the tie rails, red letter "Z" would be necessary for the same purpose.

It is my opinion, from an examination of the drawings and a reading of the specification of letters patent 187,100, Complainant's Exhibit No. 1, that the guide-frame referred to in said patent is formed by the boards or planks, illustrated by red lines marked "Z Z," and the tie rails "*r r*," as I have illustrated in Exhibit No. 1, of January 12, 1882, and in the two drawings marked by me No. "2" and No. "3," "A. S.," and model marked by me No. "4," "A. S."

(Defendant's counsel offers in evidence a drawing marked "Perspective View, Clark's Guide-Frame" (letters patent No. 187,100, February 6, 1877), in connection with racks and cloths No. 2, A. S., marked "Defendant's Exhibit No. 2 of January 12, 1882, E. W. R.")

(Objected to by complainant's counsel as irrelevant and immaterial, and not in any way representing plaintiff's patent as described and represented in Plaintiff's Exhibit No. "1," or by Complainant's Exhibit No. "9," which is the model of the apparatus described in Complainant's Exhibit No. 1.)

(Defendant's counsel offers in evidence a drawing marked "Perspective View of Clark's Guide-Frame" (letters patent No. 187,100, February 6, 1877), No. 3, A. S.")

(Complainant's counsel makes same objections as above.)

(Marked "Defendant's Exhibit No. 3, of January 12, 1882, E. W. R.)

(Defendant's counsel offers in evidence model of guide-frame (letters patent No. 187,100, February 6, 1877), referred to by this witness, and marked by him No. 4, A. S.)

283 (Complainant's counsel objects as above, and further that said patent contains no particular description of a "guide-frame;" that a "guide-frame," as mentioned in said letters patent No. 187,100, does not limit the user to any particular style of a guide-frame; also that the so-called "guide-frame" offered by defendant's counsel is not a "guide-frame" and not capable of use as a guide-frame.)

(Complainant's counsel withdraws all of the above objections from and after the words "also that," and to the end of said objection.)

(Defendant's counsel asks the complainant's counsel if he will admit, as he has heretofore so stated, that the model of guide-frame now offered in evidence and marked "No. 4, A. S.," is not a guide-frame and cannot be use as a guide-frame.)

(Complainant's counsel states that he has made no such assertion as implied by defendant's counsel, and will admit nothing.)

(Defendant's counsel calls attention of the complainant's counsel to the fact that he offered as an objection to the model "No. 4, A. S." "that the so-called guide-frame No. 4, A. S., offered by defendant's counsel is not a guide-frame and not capable of use as a guide-frame.")

(Model marked "Defendant's Exhibit No. 4 of January 12, 1882, E. W. R.")

(Complainant's counsel states that the guide-frame just offered by defendant's counsel is not constructed as the guide-frame in common use by the cider makers are constructed, but might possibly be used as such.)

Witness continues:

In complainant's model, Exhibit No. 9, the part or device which is unlike any other part or device in complainant's patent No. 187,100 (Exhibit No. 1) is a square frame, composed of parts which I have marked with pencil——

284 (Counsel for complainant objects to witness having made any marks or letters upon any of complainant's exhibits or any other exhibits which are in evidence, and objects to any testimony being received in reference to such marks or letters.)

Witness resumes:

Marked with pencil with letters "F F" "F F" on the four side pieces composing the same. The four side pieces of the frame are so arranged and secured together as to form a shallow frame or "form," not unlike the sides of a square box of shallow depth without either top or bottom. The ends of the two opposite side pieces "F F" of this frame project to a short distance past the outer sides of the transverse side pieces "F F," and are made with a "relish" to a depth sufficient to bring the upper surface of each "relish" on a plane with the upper edge surface of the narrower side pieces "F F." In the model the side pieces secured to the pieces "F F" of the frame have laid over them at their ends and over the upper edges of pieces "F F" pieces arranged horizontally and extending outward to a considerable distance from the inner sides of the frame so as to form at each opposite end flanges or ledges. About central in the length of these horizontal pieces are made notches of sufficient length and depth to receive the upright posts of the press frame to hold the frame or form from shifting in either direction when placed in position in the press. These horizontal pieces also operate to stiffen the frame and prevent its being racked or twisted out of shape. In the

model there is not shown any transverse bar corresponding with the bar or beam marked with red letter "Y" in Figs. 1 and 2 of the drawings of Defendant's Exhibit No. 1 of January 12, 1882, or with the part marked "D" in Fig. 2 of the drawings of complainant's patent, marked "Exhibit No. 1." Neither does it show the piece
285 marked with red letter "W" in Fig. 2 of drawings in Defendant's Exhibit No. 1 of January 12, 1882, and in Fig. 2, where the same piece is shown in complainant's patent (Exhibit No. 1); for the reasons I have stated in this answer I would say that I find in model (Exhibit No. 9) the parts which correspond with the parts described in patent No. 187,100 (Exhibit No. 1) as being the lower frame-work of the press, the bed of the press and the side posts of the same and the racks "C" and cloths "F," while the frame in the model does not correspond with the guide-frame illustrated and described in the patent.

7 Q. State whether or not the space bounded by the pieces marked "Z Z" and racks "C" below and piece "D" or "Y" above, as shown in Fig. 2 of Defendant's "Exhibit No. 1 of January 12, 1882, E. W. R.," might not indicate the off or rear side of a frame like the frame you marked "F F" in the model Complainant's Exhibit No. 9.

A. No, sir; it would not indicate an off or rear side of a frame like the frame "F F" in the model "Exhibit 9;" a space in drawings never intelligently indicates anything or part in the thing or structure intended to be illustrated unless it be marked in some manner or other; the two vertical full lines "P P" extending from the piece red letter "Y" or black letter "D" in the drawings Fig. 2, and the dotted lines, also shown in that drawing, and running vertically on a line with the vertical post, indicates one of the upright posts shown in Fig. 1 of said exhibit. If the said full lines which I have marked "P P" were dispensed with or omitted, and the dotted lines shown were continued through the space referred to in the question, such dotted lines would indicate that the blank space referred to in the question was some piece or part which obstructed the view of the post, and for that reason the post is plainly shown to extend down from its broken top to the lower frame-
286 work of the press, and that there is no rear or off side piece of a frame shown in said drawing.

8 Q. State what you find to be the combination of parts, elements, or things enumerated in the claims of letters patent 187,100, being Complainant's Exhibit No. 1?

(Objected to by counsel for complainant as not the best evidence, as the patent shows for itself.)

A. The parts recited in the claim mentioned in the question is the "guide-frame D," extended "pomace rack," and a cloth to enclose a layer of pomace on said rack.

9 Q. State whether or not you find illustrated in the drawings of letters patent 187,100 (being Complainant's Exhibit No. 1) the combination of devices, things, or elements set forth in the claim of said patent?

(Objected to by counsel for complainant, the same as above.)

A. I find illustrated in the drawings an aggregation of things, or devices, which aggregation includes what is described in the specification, when referring to the drawings, as being a guide-frame, pomace rack, which has its ends extended outward beyond the girts of the so-called guide-frame and a cloth; but these things, or devices, are not shown or illustrated in the drawings to be in such a relative situation with each other as to show them to be an operative combination in which the said things, or devices, while operating individually, are made to have an associated or co-operative operation as is had in a legitimate and active combination; in Fig. 1 of complainant's patent 187,100 (Exhibit No. 1) there is shown, with other things, a rack and a cloth enveloping a layer of pomace; but no guide-frame, so-called; in Fig. 2 of the said patent is shown,
287 among other things, a rack on which is supported a layer of pomace enveloped by a cloth and a second rack resting on the enveloped layer of pomace and the guide-frame "D," so termed in the patent, but no enveloping cloth is shown to be employed with the so-called "guide-frame," while it is supported on the extended rack; the specifications of the said patent states that on the "rack C" is laid the "guide-frame D, and the cloth C is then laid over the rack inside of the frame and opened out to receive the pomace;" this is not shown in the drawings. The specification, continuing, states that after receiving the pomace which is "struck" level with the girts of the frame the cloth is folded over the pomace and the frame is lifted off; this description of what is done by the operator has reference to the lower rack and layer of enveloped pomace. From the further reading of the specification I would not infer that the so-called guide-frame and cloth are further used in building up the cheese as in the description of the other and succeeding operations to be had all mention of the further use of the so-called guide-frame and cloth is wholly omitted, while the racks only are specifically mentioned as follows: "The next and succeeding racks are in like manner laid on the first and filled up, and a follower is placed on the upper one when the cheese is ready to press." By reason of the facts above mentioned, I would say that the combination of things, devices, or elements enumerated in the claim of letters patent No 187,100 (Exhibit No. 1) are not shown in the drawings of that patent.

10 Q. State whether or not you understand in what form the cloth "E" is used, as it is shown in the drawings and described in the specifications forming part of letters patent No. 187,100 (being Complainant's Exhibit No. 1)?

A. It is difficult to understand in what way the cloth is
288 intended to be placed or arranged; the drawings do not show how and the specifications do not describe its form and manner of application, only that it is "laid on the rack and opened out to receive the pomace;" this description is so vague that an uninstructed operator would be required to exercise his ingenuity and by experiments give proper form to his cloth for effecting an economical envelope of the pomace.

11 Q. Examine the model marked "Complainant's Exhibit No. 9" and state whether or not you find in that model the combination of things, devices, or elements set forth in the claim of letters patent No. 187,100 (being Complainant's Exhibit No. 1).

A. I have examined the model referred to in the question, in view of the combination of elements or things recited in the claim of the patent referred to, and I find in the model a cloth, or cloths, and racks, but I do not find in it a device which is like the so-called guide-frame "D," illustrated in the drawings and mentioned in the specifications of the patent. In the stead of such a guide-frame as is shown in the patent (Complainant's Exhibit No. 1) I find a shallow four-sided frame made with nearly a square form and without either top or bottom, and having outwardly extended flat or horizontal boards secured to each of two opposite side pieces of the frame. If this device be a guide-frame, then I find such a guide-frame in the aggregation of the things in that model, Exhibit No. 9.

12 Q. State whether or not, to your knowledge, cider makers use in the process of making cider a device called a form?

A. They do.

13 Q. Describe the device called "a form" which, to your knowledge, cider makers use.

A. The "form" I am acquainted with, which cider makers use in the process of making cider, is a simple four-sided frame, made of pieces of boards about from three to four feet (more or less)
289 long, and from four to six inches wide, set edgewise, with their ends secured together in a manner not unlike the sides of a box before the bottom and top are put on, and it is used as [a] shallow, bottomless box, which, when used, is placed upon the bed of the press, or on a layer of pomace already formed with straining material in place, and it is used as a "measure mould" for holding the several layers of pomace cheese uniformly in their several directions of extensions. It is a very old device, and I believe does not materially differ from those used at this present day.

14 Q. I now place before you a model marked "Defendant's Exhibit No. 1, December 12, 1881. E. W. R., Sp. Ex." Examine the same, and, if you know, state what it represents.

A. I have examined the said model. It represents in one part a bed of a cider press, in another part one of several racks employed in forming apple pomace cheeses, and in another part a moulding form or frame for shaping the layers of the cheese, and giving to them a uniformity of depth or thickness, and in another part straining cloths for enveloping the individual layers of the cheese. The other parts, the uprights, are guiding posts for holding the racks and form from shifting while the layers are being made, and together the several parts of the model represent a cheese former of a cider press.

15 Q. State whether or not you have ever seen all those parts mentioned in your last answer in large size and operating forms; and, if so, where and when.

A. I have seen those several parts mentioned by me in my former answer, substantially the same form as shown in the model ("De-

fendant's Exhibit No. 1, of December 12, 1881. E. W. R., etc."), in full sizes and operating forms in the cider manufacturing establishment of George Casper, near Howe's Cave, in the county of Schoharie, in this State, on July 22, 1881.

290 16 Q. Describe the several devices, to wit, the press-bed, racks, form, cloths, and guiding posts, you say you saw at George Casper's cider-making establishment in the summer of 1881, and state how those parts compare with the parts shown in model, "Defendant's Exhibit No. 1, of December 12, 1881. E. W. R., Sp. Ex."

A. In Mr. Casper's establishment the press bed was longer in proportion to its width than the press bed in the model, and had a gutter made in its upper side, marginal end and side portions, which is not shown in the model. The racks were made of narrow slats, placed at short distances apart, and held in place by four or five slats arranged transversely about a foot, more or less, apart, and secured by nails. These slat racks were, I should judge, without having measured them, about three feet six by four feet in dimension, more or less. The moulding form was simply a four-sided shallow frame, a little shorter in one direction than the length of the slat racks, and about the same width or length as the racks in the other direction, so that the said racks would fully support the said form. The sides of the frame were secured together at their ends and strengthened by corner blocks substantially the same as the sides of the form are in the model. To the outer sides of two opposite ends or sides of this form were secured strips of wood, substantially as shown, to be secured to two opposite sides of the "form" in the model. These strips terminated a little short, about, I should judge, two or three inches from the outer ends of the "form." Made in the "press bed," at distances apart in the length of the same about equal to the length of the "form," in both side margins of the bed, were small mortises similar to those in the bed in the model. In each of these mortises were set a removable post made of wood, about two inches square, more or less. These posts were so regularly placed that they would, in one direction, nicely re-

291 ceive between them in one way the form with the ends of the projecting slips on the outer side of the two opposite ends of the same, and the racks would also be received between the said posts; these posts prevented the racks from shifting in one direction, and also held the forms from shifting in either direction; the upper ends of these removable posts entered into corresponding mortises made in planks secured to the floor timbers of the floor above, in which mortises the upper ends of the posts could be freely moved; secured to these planks were small pulleys, over which ran a cord which had weights secured to one end, and, if I remember rightly, a hook or ring to the other, for engagement with a nail or pin or hook at or near each corner of the form; these weights were four in number, and one at each corner or post, and they about counterbalanced the weight of the form; the racks in one direction projected a few inches beyond two opposite sides of the form, and in another direction extended out flush with the other opposite ends of

the form, so that the form was fully supported by the rack when in place; the "cloths" were of coarse fabric or kind of burlaps, and, although they were stained, yet, I should judge, they were of the same material as the cloths shown in the model.

The further examination of witnesess in the above-entitled cause adjourned until Friday, the 13th day of January, 1882, at 10 o'clock in the forenoon, at the office of said special examiner, 31 North Pearl street, Albany, N. Y.

[L. S.] EDWARD W. RANKIN,
Special Examiner and Notary Public in and for the County of Albany, N. Y.

292 Circuit Court of the United States, Northern District of New York. In Equity.

THE CLARK POMACE HOLDER COMPANY
ag't
WILLIAM H. FERGUSON.

Examination of witnesses for the defendant, taken before Edward W. Rankin, special examiner and notary public, pursuant to adjournment, on the 13th day of January, 1882, at 10 o'clock a. m.

Continuation of testimony of ALEXANDER SELKIRK:

17 Q. State whether or not the model (Defendant's Exhibit No. 1, of December 12, 1881, E. W. R.) is a good and substantial representation of the corresponding parts of the cider press, which you have stated you saw at Casper's cider making establishment, in July, 1881, and described in your last answer.

A. The model mentioned in the question is a good and substantial representation of the several parts of the press referred to, except that the marginal gutters are omitted, as I have stated; the racks, the form, the cloths, the guiding posts and plank having mortises overhead are all substantially the same as those parts which I examined at Casper's establishment. From the model is omitted the pulleys and cords, having hooks or rings and weights; the hooks or rings on the form are also omitted from the model. The model is a good and substantial representation of the principal and essential parts of the cheese former which I examined at Casper's place in July, 1881.

18 Q. Examine and compare the cheese former model (Defendant's Exhibit No. 1, of December 12, 1881, E. W. R.) with the model, Complainant's Exhibit 9, and state how the several parts in the first-mentioned model compare with the several parts in the model, Complainant's Exhibit 9.

A. I have examined and compared the models referred to
293 in the question and find the parts in the respective cheese formers, as illustrated by said models, to be substantially the same as operative devices and adapted for same operations and calculated to effect the same results; in the model (Defendant's Exhibit 1, of December 12, 1881, E. W. R.) the lower frame-work and

vertical main posts of the press are omitted; in both cheese formers, as illustrated by the models in question, there is shown substantially the same rigid "racks" and "forms" and cloths"; in both cheese formers in said models the "racks" have such greater extension of length than the "form" used with them respectively, so that they each will support its respective "forms" when placed in position; in both cases the "forms" will uniformly mould the several layers of pomace in the cheese; in both cases the "cloths" are adapted to be placed in their respective "forms" as they are each placed on their respective "racks" and be turned over so that apple pomace may be received in the "form," and when turned over the pomace as it is held in the "form" the said "cloths" are adapted to envelope the layers of pomace and hold their parts together from breaking away and at the same time serve as straining material through which the juice may escape from the pomace; in complainant's cheese former, Exhibit 9, the notches made in the middle of the length of the horizontal ledges, or extensions from the two opposite sides of the "form," operate with the side posts of the press frame to hold the "form" from shifting; in the Casper cheese former (Defendants' Exhibit 1, of December 12, 1881, E. W. R.) the ends of the slats on the outside of the two opposite sides of the "form" correspond with and operate the same as do the notches (I have described as being in complainant's "form," Exhibit 9), and hold with the removal posts to prevent the "form" from shifting, the same as does
294 the notches of the posts in complainant's models, Exhibit 9. The cause of these facts I have just mentioned. I find that the Casper cheese former, Defendants' Exhibit No. 1, of December 12, 1881, is substantially the same in all its parts as the cheese former, complainant's model, Exhibit 9.

19 Q. Examine and compare the Casper cheese former, as represented in defendant's model (Defendant's Exhibit No. 1, of December 12, 1881), with the Clark cheese former, shown in the drawings and described in the specifications of complainant's patent, No. 187,100, and marked Complainant's Exhibit 1, and state how you find the parts and devices in the Casper cheese former to correspond and compare with the parts or devices shown and described in the said patent No. 187,100, Complainant's Exhibit 1.

(Objected to by counsel for complainant as indefinite, irrelevant, and immaterial.)

A. I have examined and compared the parts of the respective cheese formers mentioned in the question, and find that in both cheese formers there are employed substantially the same rigid racks composed of slats, and held connected together by cross slats or bars. I also find in each of said cheese formers cloths for enveloping the layers of pomace when formed. Here all resemblance or similarity ceases in the Clark patent, Complainant's Exhibit 1, of December 12, 1881. The part or thing described as being a guide-frame is only a device composed of two side boards, which do not form in fact the sides of a "box," "frame," or "form." In the Casper cheese former the model shows a "form" which is made in the shape of a

shallow box frame, without either top or bottom. In the Clark patent, Exhibit No. 1, of December 12, 1881, I do not find, made in or with the so-called guide-frame, any notches or other devices
295 adapted to operate with any vertical posts or ways to prevent the so-called "guide-frame" from shifting. In the Casper cheese former I find abutting shoulders of strips or bars secured to the opposite sides of the box, frame, or form which are adapted to operate with vertical posts for holding the form from shifting in either direction. For the above-stated reasons I do not find any cheese former represented in the Casper model, Defendant's Exhibit No. 1, of December 12, 1881, which is the same in all its parts as the cheese former shown and described in the Clark patent, Defendant's Exhibit 1.

20 Q. Examine the Casper cheese former model, Defendant's Exhibit No. 1 of December 12, 1881, and state whether or not you find shown in it the alleged invention or combination of elements set forth in the claim of the Clark patent No. 187,100, Defendant's Exhibit No. 1.

(Objected to by counsel for complainant as indefinite, irrelevant, immaterial, and assuming.)

A. I have examined the Casper cheese former—the model—Defendant's Exhibit No. 1 of December 12, 1881, and the claim referred to in the question; I find in the Casper cheese former "extended pomace rack" and "cloths" to enclose a layer of pomace, but I do not find a guide-frame corresponding with the so-called guide frame shown and described in complainant's patent, Exhibit 1. The claim referred to in the question reads as follows: "The guide frame D, in combination with an extended pomace rack and a cloth to enclose a layer of pomace therein, substantially as described." As the words "substantially as described" refers back to the drawings and specification in Clark's patent, Exhibit 1, I must refer to the same to obtain a knowledge of the things or devices intended to be understood as being included in the combination or alleged invention set forth in the claim mentioned in the question. In
296 making this reference to the drawings and specifications of the patent, Exhibit 1, I am enabled to say that, provided the things or devices set forth in the claim mentioned in the patent are those referred to as they are illustrated and described in the patent, then, in such case, I do not find in this Casper cheese former—Defendant's Exhibit No. 1 of December 12, 1881—the combination or invention set forth in the said claim.

21 Q. Assuming that the claim in the Clark patent No. 187,100, Complainant's Exhibit 1, might refer and include among the elements mentioned in the said claim "a form" or moulding-frame like the form or moulding-frame shown in complainant's model, Exhibit 9, instead of the so-called "guide-frame D," so that the said claim would read substantially as follows, "The form or moulding-frame, in combination with an extended pomace rack and a cloth to enclose a layer of pomace therein, substantially as described," would, under such an assumption, you say that the Casper cheese former,

Defendant's Exhibit No. 1, of December 12, 1881, show such a combination of parts or elements as is set forth in the hypothetical claim I have just formulated?

A. Under such an assumption, and compared with the hypothetical claim in the question, I would say that I would find and do find such a combination of elements and parts.

22 Q. I place before you a model alleged to be a model of a cheese former, which model is marked Defendant's Exhibit No. 3, December 5, 1881, E. W. R., Sp. Ex. and notary. Please examine and compare the same with the cheese former illustrated in the drawings and described in the specifications of the Clark patent No. 187,100, marked Complainant's Exhibit No. 1, and with the Casper cheese former, Defendant's Exhibit No. 1, of December 12, 1881, and state how you find the said cheese former, Defendant's Ex-
297 hibit No. 3, December 5, 1881, compare with the cheese former shown in the patent No. 187,100, Complainant's Exhibit 1, and the said Casper cheese former, Defendant's Exhibit No. 1, of December 12, 1881?

(Objected to by counsel for complainant as indefinite, irrelevant, and immaterial and assuming, and as having been already substantially answered.)

A. I have examined the Exhibits mentioned in the question, and have made the comparison called for in the question. I find in Defendant's Exhibit No. 3, December 5, 1881, a large-sized rigid rack of slats substantially the same in form of construction as the racks marked "C" in the drawings of letters patent No. 187,100, Complainant's Exhibit 1, and the rack shown in the Casper cheese former, Defendant's Exhibit No. 1, of December 12, 1881, the difference being that the racks shown in the last two mentioned exhibits are square, or nearly square, in form while in Defendant's Exhibit No. 3, December 5, 1881, — is slightly longer in one direction than the other. I also find in Defendant's Exhibit No. 3, December 5, 1881, two smaller racks consisting each of a series of slats secured at intervals apart with traversely arranged slats; these two smaller racks of slats when placed together I find form a rack substantially sectional in its character, and substantially the same as the rack of larger size shown in defendant's same exhibit and which I have just described. I also find in Defendant's Exhibit No. 3, December 5, 1881, a "form or moulding frame," which is a little longer in one direction than the other; this moulding frame is composed of narrow end strips placed opposite to each other with their ends secured to the respective ends of two narrow side pieces so as to form a shallow frame substantially the same as the frame or form shown in Defendant's Exhibit No. 1, of December 12, 1881, the difference being that of dimensions; the ends of the side pieces of the form or frame in
298 Defendant's Exhibit No. 3, December 5, 1881, project a short distance beyond the outer side of the end pieces, and are slightly cut away from the lower edges of said end portions apparently for forming handles by which an operator may lift or handle the form or frame; the corners of this frame are stiffened by corner

blocks; secured to the side pieces of this "frame or form," and on the outer side thereof, at about the middle of the length of each side, are two vertical cleats placed at a short distance apart so as to form in fact a recess or holding notches or ways, which are adapted to receive and hold with a vertical piece made secure to some portion of the press when in proper situation, corresponding with the situation of said cleats, so that the said cleats would hold the frame or form from shifting, as do the ends of the slats on the outside of two opposite side pieces of the form or frame in the Casper cheese former, Defendant's Exhibit No. 1, of December 12, 1881, in their operation with the vertical posts, as I have already described in a former answer; I do not find in complainant's patent No. 187,100—Defendant's Exhibit No. 1—any device or thing which corresponds with the frame or form I have described as being found in defendant's model, Defendant's Exhibit No. 3, December 5, 1881, but I find in said patent a device termed the guide-frame "D," which, in its form of construction, is substantially the same as represented in red lines in Defendant's Exhibit No. 1, of January 12, 1882, and in drawings in Defendant's Exhibits Nos. 2 and 3, of January 12, 1882, and model, Defendant's Exhibit No. 4, of January 12, 1882, while I find in the Casper cheese former, Defendant's Exhibit No. 1, December 12, 1881, substantially the same device; I find in all exhibits mentioned in the question cloths to be used with the racks and the forms or frames in the Casper cheese former, Exhibit No. 1,
299 of December 12, 1881, and Exhibit No. 3, of December 5, 1881, and with the so-called guide-frames mentioned in complainant's patent No. 187,100, Complainant's Exhibit 1.

(Complainant's counsel moves to strike out the answer to question No. 22 as not responsive to the question, indefinite, immaterial, and interposed to consume space.)

23 Q. In your opinion, is any different operation had or any different or new result secured by reason of the use of the two smaller rigid racks shown in Defendant's Exhibit No. 3, December 5, 1881, from the operation had and results obtained by the use of the larger rigid rack, also shown in the same exhibit?

A. In my opinion, the use of the two smaller racks, when placed together with one of the long sides of one of said smaller racks, continuous with one of the long sides of the other racks, that said smaller racks will form substantially a rack like the large rack also shown in the said exhibit, and would operate the same and with the same results.

24 Q. State whether or not, in your opinion, the device shown in the drawings and described in the specifications of the Clark patent No. 187,100 and marked "Complainant's Exhibit No. 1," and termed the guide-frame "D," and which you say is illustrated by red-line drawings in Defendant's Exhibit No. 1, of January 12, 1882, and in drawings marked "Defendant's Exhibits Nos. 2 and 3, January 12, 1882," and model marked "Defendant's Exhibit No. 4, of January 12, 1882," would operate the same as the form or moulding frame illustrated in complainant's model, "Exhibit No. 9," and in

"Defendants Exhibit No. 1, of December 12, 1881," and "Defendant's Exhibit No. 3, December 5, 1881."

(Objected to by counsel for complainant as indefinite, immaterial, and irrelevant.)

A. In my opinion the guide frame "D" shown and described in the patent, Complainant's Exhibit No. 1, and illustrated in the other exhibits mentioned in the question, would not operate as a practical measure, mould, or frame for giving to each one of the several layers of pomace which might be formed by the said device the same uniformity of size and shape and quantity to the layers so formed as is had by the use of the forms or moulding frames as shown in complainant's model, "Exhibit No. 9," and "Defendant's Exhibit No. 1, of December 12, 1881," and "Defendant's Exhibit No. 3, of December 5, 1881," for the reason that the two open ends of the guide-frame "D" would permit the pomace to force the cloths at said open ends to bag outward to a considerable distance beyond the ends of the said "guide-frame," while in the forms or moulding frames in the other exhibits mentioned in the question the cloths would be held by the four sides of the said forms or frame from bagging out at the sides, and would so mould the layers of pomace made therein as to give to each layer the same uniformity of size, form, and quantity.

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25 Q. State whether or not you find in "Defendant's Exhibit No. 3, of December 5, 1881," the subject-matter or invention shown, described, and claimed in complainant's patent No. 187,100, "Complainant's Exhibit No. 1?"

A. I have examined the exhibit referred to in the question and have compared it with the alleged invention illustrated, described, and claimed in the patent mentioned in the question, and I find that in the "Exhibit of Defendant, No. 3, of December 5, 1881," there is not shown the combination of devices shown in the said patent and described and claimed therein. "Defendant's Exhibit No. 3, of December 5, 1881," shows racks and cloths substantially as the racks and cloths shown and described in the patent, but it does not show any guide-frame or other device similar to the guide-frame "D" shown and described in patent, "Complainant's Exhibit No. 1," and forming one of the elements in the combination claimed in that patent. For the above-stated reasons, it is my opinion that the subject-matter or invention shown, described, and claimed in complainant's patent, "Exhibit No. 1," is not found in "Defendant's Exhibit No. 3, of December 5, 1881."

301

25½ Q. State, if you are able so to do, what you find novel in the Clark patent No. 187,100, Exhibit No. 1 of Complainant, which is novel, in view of the state of the art prior to February 6, 1877, the date of that patent, as you are acquainted with it.

A. In view of the state of the art prior to February 6, 1877, as I am acquainted with it, I find that the only novel device which is at least new to me is the device termed the guide-frame "D," formed by two narrow boards or planks, called in the patent "bottom girts," and held together by two narrow cross-rails secured at the upper

edges and outer ends of the said boards or plank so as to form two side boards opposite to each other and parallel with each other with open ends transverse to the said opposite sides. This device is new to me, as all the older devices for holding pomace, when being formed in layers, were in the form of rectangular frames, having four sides of about equal depth which would bound the four side edges of the layer of pomace when being made instead of only two, as is done by the so-called guide-frame "D."

(Counsel for complainant moves to strike out that part of witness' answer which describes the guide-frame "D" as formed by two narrow boards or planks, etc., on the grounds that no such guide-frame is mentioned in the patent.)

Cross-examination by the counsel for complainant:

26 Q. Are you familiar with the practical details of making cider?

A. I believe I am.

302 27 Q. Have you ever been engaged in the manufacture of cider?

A. I have not; my father and my uncle used to manufacture when I was home.

28 Q. Are you familiar with the names of the different articles and machines used in making cider?

A. I could not say; I could enumerate the different articles and leave counsel to judge.

29 Q. What do you understand is meant by the form or frame that is used in making cider?

A. The form or frame—sometimes called the hoop, as I am acquainted with it—is a rectangular or square formed frame varying in size according to the capacity of the press it is to be used with, and in dimensions from three to five feet square, and generally made of inch board from three and a half to five inches in depth, and is employed for temporarily holding pomace until a sufficiency has been supplied to form a layer; this form or frame or hoop operates to give to the edges of each layer as it is made a squared face; this form or frame or hoop also operates to hold the straining material, whether straw or cloth, which extends out past the bottom of each layer in proper position so that when the frame or form is filled the straining material which was previously turned up against the inside surfaces of the form or frame may be readily turned inward over the top and struck surface of the pomace contained within the frame or form. "Complainant's Exhibit No. 9," and "Defendant's Exhibit No. 1, of December 12, 1881," and "Defendant's Exhibit No. 3, of December 5, 1881," are good representations of what I understood to be a form, frame, or hoop employed by cider makers.

30 Q. Was this form or frame in common use among cider makers prior to the year 1873?

A. This form or frame, as I have described it in my former answer, was in common use in the town of Bethlehem, Albany
303 county, State of New York, more than forty years ago, to my own knowledge, and were constructed substantially in the

form of Defendant's Exhibit No. 1, of December 12, 1881, having their corners strengthened as in that exhibit, but without the strips on the two outer edges.

31 Q. Are these frames sometimes provided with slots or guide-boards to keep them in place while filling in the pomace?

A. Will counsel please state what he means to be understood by slots or guide-boards if any are shown in the exhibits?

(Complainant's counsel calls witness' attention to Complainant's Exhibit No. 9, of the form with the guide-boards attached horizontally on the top edges of the ends of the form, with the slots therein, to receive the posts of the press.)

A. Not that identical form of guiding device was employed, but something somewhat like that shown in "Defendant's Exhibit No. 1, of December 12, 1881," on the corners of the forms themselves in some cases.

32 Q. When the frame is so provided with guides is it not sometimes called a guide-frame?

A. I never knew that term applied to a form or frame as I have described them, and I first learned that term or that word applied to a device used for forming cheeses for cider presses from the Clark patent of February 6, 1877 (No. 187,100, Complainant's Exhibit No. 1), and I believe the said term was coined especially to distinguish it from the old and well-known forms or frames before used.

(Complainant's counsel moves to strike out the last part of witness' answer, beginning with words "and I first learned, etc., to the end," as not responsive to the question.)

33 Q. Did you ever see a guide-frame or form in practical use constructed like the model offered in evidence yesterday and marked Defendant's Exhibit No. 4, of January 12, 1882?

304 A. I never saw a guide-frame like the exhibit mentioned in the question in practical use.

34 Q. With your knowledge of cider making, and being familiar with the form or frame in general use, and having before you letters patent No. 187,100, would you, in attempting to build the machine described in said patent, make the "guide-frame" like the model, "Defendant's Exhibit No. 4, of January 12, 1882?"

A. I would and I did; I made that model mentioned in the question from a reading of the specification and an examination of the drawings of letters patent No. 187,100, granted to Clark February 6, 1877. The term guide-frame employed in that patent and its reference to what was termed bottom girts of the guide-frame, and omission to all reference to a form or frame, led me to believe that the guide-frame, so-called, was a novel and different device from any other device before used in cider making, and being thus led by the specifications of that patent, and a reading of the drawings attached therewith, I constructed the model, "Defendant's Exhibit No. 4, January 12, 1882," which I believe perfectly represents the guide-frame referred to in that patent.

35 Q. For whom did you make that model and for what purpose?

A. The model I made originally for my own satisfaction, and I think without any knowledge of any person whatever, and I subsequently decided in my mind that it would be a better illustration to the eye of the device that I found in that patent than would the drawings which were submitted in the process of my examination.

36 Q. When did you make this model?

A. Yesterday or day before; I don't remember.

37 Q. With your knowledge of cider making would you place upon the guide-frame made for practical use the timber "Y," represented in the drawing in evidence marked "Defendant's Ex-
305 hibit No. 3, January 12, 1882?"

A. Not unless I would use it as shown in that exhibit, which is the only practical way that I can see that the guide-frame and bar "Y," over the guide-frame, as shown in the said exhibit, could be used, after the layers or layers of pomace were made; in such use the bar "Y" pressing down on the sides "Z Z" of the guide-frame, as it rests on the upper rack, would operate to make the sides "Z Z" of the guide-frame serve as blocking, against which the force of the pressing mechanism would be exerted.

(Counsel for complainant moves to strike out the whole of last answer, and requests the witness to answer yes or no.)

38 Q. Question repeated, and a direct answer, yes or no, insisted upon.

A. I cannot give any direct answer.

(Complainant's counsel objects to witness going any further.)

Witness continues:

To me it is evident that the guide-frame may serve two purposes; in one direction it may form a substitute for the old-fashioned form, frame or hoop for receiving pomace preliminary to its being formed in a layer, and in another direction it may serve as part of a blocking device or devices for filling up between the cheese when formed, and the follower above when the bar "Y" is used.

30 Q. Have you stated your entire occupation in the first question of defendant's counsel?

A. I have, as far as I have followed any occupation since 1872, I believe; before that I would often construct models for inventors to be used in their application for patents; draughting I consider as part of my business as solicitor of patents, though I have done but little of it the last ten years.

40 Q. Is your occupation now the same as it was October 15, 1880?

A. Yes, sir; I don't know that it is any different.

306 41 Q. Are you an attorney in patent cases?

A. Generally, and have conducted cases before the court, but by courtesy, having no license as attorneys generally have, acting generally in such capacity as consulting counsel, and sometimes conducting the examination of witnesses as counsel generally do in patent cases, yet I do not style myself as attorney-at-law in such cases.

42 Q. Did you not testify on October 15, 1880, in the case of Lyon against Fisher and others, that you were an attorney in patent cases?

A. If I testified that date I might have testified to that effect, and it would be substantially true, as may be shown by records of cases in litigation before the courts, and also before the Patent Office.

43 Q. When were you first consulted by the defendant in this case?

A. Some time before June 23, 1881; the exact date I could not tell.

44 Q. Will you swear that it was not as early as April, 1881?

A. It might possibly have been; it was before defendants saw Mr. King that I had examined the case of an alleged infringement on the Clark patent, and informed him, in my opinion, the patent was not good.

45 Q. Do you know anything of the Cider Makers' Mutual Defense Association?

(Objected to by counsel for defendant as immaterial, irrelevant, and not a proper subject for cross-examination, and calling for an answer to a question which assumes a fact to have been proven, and counsel for defendant gives notice that he is now, and has been for some time past, entering upon an examination entirely foreign to the subject-matter brought out by the direct examination, and that he has thereby, and is now, making this witness a witness for and in behalf of the complainant.)

(Complainant's counsel states that he desires to show that
307 the witness is interested in this case, and has been retained by and acted as counsel for the defense.)

A. I do not know that any such association exists or did ever exist. I advised the formation of such an association when Mr. Ferguson first came to me, and after I had arrived at a conclusion that the patent on which this action was brought was not infringed by him, I advised him that it would not pay him to defend alone; that it would be cheaper for him to settle on terms offered by complainants, unless he would get others who were using the same devices he was using to aid him in his defense. Thus far all payments for my services have been paid by Mr. Ferguson, and I look to Mr. Ferguson individually for the payment of any other services not already paid for or which I may in future render. I have no interest whatever in this case—no pecuniary interest. I expect to receive payment for all services I render from Mr. Ferguson only.

(Counsel for complainant closed cross-examination.)

Witness continued, in response to last question, as follows:

I am only acting as expert.

ALEXANDER SELKIRK.

Subscribed and sworn tc before me this 13th day of January, 1882.

[L. S.] EDWARD W. RANKIN,
Special Examiner and Notary Public in and for the County of Albany and State of New York.

Circuit Court of the United States, Northern District of New York.
In Equity.

THE CLARK POMACE HOLDER COMPANY
ag't
WILLIAM H. FERGUSON.

308 Examination of witnesses for the defendant taken before Edward W. Rankin, special examiner and notary public, pursuant to adjournment, on the 19th day of April, 1882, at 10.30 o'clock a. m.

The parties appeared—the complainant by W. E. Ward, of counsel, and the defendant by Wm. H. King, of counsel—and such proceedings were thereupon had that the further examination of witnesses was adjourned unto Wednesday, April 26, 1882, at 10 o'clock in the forenoon, by consent.

[L. S.] EDWARD W. RANKIN,
Special Examiner and Notary Public.

Circuit Court of the United States, Northern District of New York.
In Equity.

THE CLARK POMACE HOLDER COMPANY
ag't
WILLIAM H. FERGUSON.

Examination of witnesses for the defendant taken before Edwin W. Rankin, special examiner and notary public, pursuant to adjournment.

On the 26th day of April, 1882, the parties appeared, and, at the request of the defendant, the further examination of witnesses was adjourned to Thursday, April 27, 1882, at 10 o'clock a. m.

[L. S.] EDWARD W. RANKIN,
Special Examiner and Notary Public.

Circuit Court of the United States, Northern District of New York.
In Equity.

THE CLARK POMACE HOLDER COMPANY
ag't
WILLIAM H. FERGUSON.

309 Examination of witnesses for the defendant taken before Edward W. Rankin, special Examiner and notary public, pursuant to adjournment.

On the 27th day of April, 1882, the parties appeared, and FRANCIS L. CASPER, called as a witness for defendant, and being first duly sworn, did testify as follows in answer to questions:

1 Q. Please state your name, residence, age, and occupation.

A. Francis L. Casper; aged twenty-five years; I reside at Bramanville, town of Cobleskill, Schoharie county, N. Y.; post-office address, Howe's Cave; I am a cabinet maker.

2 Q. How long have you lived at Bramanville?

A. Twenty-five years.

3 Q. Is George Casper, of Bramanville, any relation of yours; and, if so, please state his relationship?

A. He is my father.

4 Q. Please state your father's business.

A. He is a cider maker, and he runs a saw-mill and planing-mill, and a very little farming.

5 Q. How long has your father been making cider?

A. Nine years; since the fall of 1872.

6 Q. Have you assisted him in making cider?

A. Yes, sir.

7 Q. In making cider, what has he generally used?

A. Form, racks, and cloths.

(Model marked Defendant's Exhibit No. 1, of December 12, 1881, E. W. R., Sp. Ex., shown witness.)

8 Q. Does this model correctly represent the device that your father has used in making cider?

A. It does.

9 Q. Who made that model?

A. I could not say positively.

10 Q. Please state how your father used the device in making cider?

A. He first laid down the rack and then the form; next the cloths; he used the cloths, then filled in the form with pomace; then turned over the cloths, and then laid on another rack and proceeded as before.

310 11 Q. When did your father first begin to use the rack, form, and cloths?

A. He used the cloths, form, and a few slats the latter part of the season of 1873.

12 Q. Has your father been continuing to use the racks, form, and cloths since the fall of 1872?

A. Yes, sir.

Cross-examination of witness by Mr. WARD, counsel for complainant:

13 Q. When were you twenty-five years old?

A. October 10, 1881.

14 Q. Have you assisted your father in the manufacture of cider ever since he has been in that business?

A. No, sir.

15 Q. How much of the time have you assisted him?

A. Till the fall of 1880? I assisted part of that season. I assisted each season from the time he commenced making till that time.

16 Q. What time in the fall of 1876 did you commence making cider?

A. I could not say positively.

17 Q. What time in the fall of 1872 did you commence making cider?

A. I think about the middle of September.

18 Q. What did you use in making cider that fall?

A. We used the curb; some straw. I could not say positively whether we used the curb the whole season or not.

19 Q. Did you use any cloths with the curb?

A. I believe we used one large cloth.

20 Q. How did you use that cloth?

A. It was placed all around the inside of the curb.

21 Q. How deep was the curb?

A. I should think about three feet.

22 Q. What time in the fall of 1873 did you commence making cider?

A. I think about the middle of August.

23 Q. What did you use then?

A. I think we used straw.

311 24 Q. How did you lay up your cheese?

A. We laid straw in the same way with the curb.

25 Q. How long did you use the curb in the fall of 1873?

A. The whole season.

26 Q. What time did you commence to make cider in the fall of 1874?

A. I could not say positively; I think about the 20th of August.

27 Q. What did you use then?

A. Racks, cloths, and form.

28 Q. Similar to the Casper model?

A. I could not say positively whether we used the slats all combined, as in the model, or whether we used a few and handled them separately.

29 Q. You mean loose slats between layers?

A. Yes, sir.

30 Q. How did your father use the racks, form, and cloths in the latter part of the season of 1873?

A. He first laid down a few loose slats, and then the form, and then cloths, and then filed in the form with pomace and then folded over the cloths and proceeded taking the form off to lay down a few loose slats, proceeding as before, the slats extending beyond the form.

31 Q. Who worked for your father in the fall of 1873?

A. Daniel Stevens.

32 Q. When did they first commence to use the slats and form in 1873?

A. They used the form early in the season and the slats the latter part.

33 Q. How many presses did he have?

A. One.

34 Q. Did he use the curb and the form and slats on the same press in the same season of 1873?

A. In answer to question No. 25, I misunderstood the date; the answer should have been "Not at all."

35 Q. What did you use in 1873, at the commencement of the season?

A. The form, and I think straw; that is all.

36 Q. You didn't use the curb any after 1872?

A. Not after 1872.

312 37 Q. What time did you say you commenced making cider in the fall of 1873?

A. From the fifteenth to the twentieth of August; that is as near as I can remember.

38 Q. How long did you continue using straw?

A. I think till the latter part of the season of 1873; I think it was the middle of October when we changed.

39 Q. What change was made at that time?

A. We commenced using cloths in place of straw.

40 Q. When were loose slats first laid between the layers?

A. Late in the season of 1873.

41 Q. In what month?

A. November.

42 Q. When were racks first used at your father's cider mill?

A. I could not say positively; I think the first of 1874, when we combined all the slats together.

43 Q. Do you mean the season or the year 1874?

A. I mean the season of cider making of 1874.

43½ Q. How many men does it take to run a mill making cider—your father's mill?

A. From two to four men.

44 Q. Who worked for your father, in making cider, in 1874?

A. Daniel Stevens.

45 Q. Any one else?

A. I don't remember.

46 Q. Did he work the whole season?

A. I think he did.

47 Q. Did any one else work for your father besides him, in 1873, in making cider?

A. I think not, excepting myself.

48 Q. How much cider did you make in 1873?

A. I do not know.

49 Q. Did you do a fair season's work?

A. We considered we did, having just started without any advertising.

50 Q. Are you certain that it was in October, 1873, that you first used cloths in making cider?

A. I answered that question before that; I thought it was in October; it might have been in November.

313 51 Q. How late that season did you make cider?

A. I think till early in December.

52 Q. What time in 1874 did you commence to make cider?

A. I think from the 15th to the 20th of August.

53 Q. Do you remember anything about the amount of cider you made in 1874, compared with 1873?

A. I think about double the amount.

54 Q. Was Stevens the only extra man you had in 1874 besides yourself and father?

A. I don't remember; we may have had others; we may have had some outsiders come in to help evenings.

55 Q. What date are you positive of using the racks, cloths, and form as shown by Defendant's Exhibit No. 1, of December 12, 1881, E. W. R., Sp. Ex., and called the Casper model for the first time?

A. I could not answer that question, because we advanced so slowly, and we kept improving it by degrees till we had nearly the same number of slats as shown in that exhibit, and finally we nailed them together to save time in handling. We commenced with two or three slats; I could not say positively when we nailed them together.

Redirect examination of witness by Mr. KING, of counsel for defendant:

56 Q. Please explain the curb you mentioned on your cross-examination—just exactly what it was.

A. It was made similar to these racks, only was made of heavier material to make it strong and durable. These slats ran up and down. It was square—had four sides—and was clamped together on the corners, so that one side could be taken off to remove the pomace.

57 Q. You used the curb as a form, did you not?

A. Yes, sir.

58 Q. Did you use cloths during the cider season of 1873?

A. Yes; the latter part of the season.

314 59 Q. These slats which you spoke of extended underneath and beyond the form, did they not?

A. Yes, sir.

Recross-examination:

60 Q. In speaking of racks, form, and cloths, what do you mean by form?

A. A frame used to size the rings or layers of pomace.

61 Q. The layer of pomace would be of the same thickness as of the depth of the form?

A. Yes.

62 Q. Can the sides of the form be taken off—be taken apart?

A. They cannot.

63 Q. A curb, which you described a minute ago, is made to take apart, is it not?

A. Yes.

64 Q. Are there a number of layers laid up inside of the curb?

A. It is composed of one layer; the whole cheese is one layer.

65 Q. Is that the way you used the curb?

A. It is the way we commenced using; I don't think we adopted any other plan.

66 Q. Don't you understand that the usual method of using a curb by cider makers is to lay up separate layers of cheese inside of the curb?

A. I think not.

67 Q. A form, as generally known among cider makers, is generally how deep?

A. I should think from three to five inches.

Redirect examination of witness by Mr. KING, of counsel for defendant:

68 Q. Please point out on the Casper model now before you what you call the "form?"

A. That part marked "C."

69 Q. Are the cider makers in the habit at times of calling a form a curb?

A. Yes.

70 Q. Cannot a form similar to this one "C" of Casper model be made so that the sides will open or be taken apart without destroying the form?

A. It can.

315 Recross-examination of witness by Mr. WARD, of counsel for complainant:

71 Q. Did you ever see a form so made that it could be taken apart?

A. I think I have.

72 Q. Where?

A. At W. H. Ferguson's. I would not be positive how his works, but I think it is a form and slat combined?

73 Q. Is that the only one?

A. I do not remember of ever seeing any others.

74 Q. Is not Ferguson's form made by turning up four or five inches of each side of the racks and fastening them up?

A. I think it is.

75 Q. When were the side posts and pulleys first used on your father's press?

A. I believe it was in 1874.

76 Q. Have you a memorandum in your hand from which you refresh your memory as to dates?

A. I refresh my memory as to the help—the year each man worked for us.

Redirect examination of witness by Mr. KING, of counsel for defendant:

77 Q. Could not a form similar to "C" of the Casper model be made with hinges or clamps at the corners, so that the form could be opened or sides taken apart?

A. It could.

77½ Q. How long have you been a cabinet maker, and are you in business for yourself at present?

A. I have been a cabinet maker for about two years, and during the whole of that period I have been in business for myself at Bramanville. During part of that time I have worked for my father at other business.

Recross-examination of witness by Mr. WARD, of counsel for complainant:

78 Q. Did you ever see or know of a practical cider maker
316 using a form similar to the one marked "C" in the Casper model, which was made so that the sides could be taken apart, except the Ferguson form already testified to?

A. No.

79 Q. Have you any interest involved in this suit?

A. No more interest than would naturally exist between father and son.

80 Q. Did you ever hear of the Cider Makers' Mutual Defense Association?

A. I think I have.

81 Q. Do you belong to that association?

A. No, sir.

82 Q. Does your father belong to that association, as you understand it?

A. When you asked me that question, I thought you referred to an association mentioned in the National Press, a paper published by Mr. Boomer; that's all I know about it; I did not read the whole piece over; I just looked at the heading.

83 Q. Do you understand that your father belongs to an association having for its object the breaking or having judicially declared invalid the patent under which this action is brought?

A. I think he does.

84 Q. Did you write a letter for your father to me about the royalty on this patent?

A. I did.

Redirect examination of witness by Mr. KING, of counsel for defendant:

85 Q. Have you any pecuniary interest in this suit?

A. No, sir.

86 Q. Do you know whether there is any such association in existence as is mentioned in question 83?

A. Yes.

87 Q. Having those objects?

A. I think I have; but I have no positive knowledge about it.

Recross-examination of witness by Mr. WARD, of counsel for complainant:

317 88 Q. Have you seen the paper which the cider makers have signed in reference to defending this action?

(Objected to on the grounds—first, that no paper of such description has been proved to have been made; second, if such paper is proved to have been made, the paper, being in writing, is the best evidence, and secondary evidence cannot be admitted.)

A. I think I have seen the paper, but no names.

89 Q. Did you read the agreement contained in that paper?

(Objected to by counsel for defendant on the same grounds as above.)

A. I read a part of it, but not the whole of it; if I had been particularly interested I would have read the whole of it.

FRANCIS L. CASPER.

Subscribed and sworn to before me this 27th day of April, 1882.

[L. S.] EDWARD W. RANKIN,
Special Examiner and Notary Public in and for the County of Albany and State of New York.

GEORGE C. VALENTINE, called as a witness on behalf of the defendant, and, being duly sworn, did testify as follows in answer to questions:

1 Q. Please state your name, age, residence and occupation.

A. George C. Valentine; I am thirty-four years old; I reside at Charlton, Saratoga county, in the State of New York; I am a farmer, and make a little cider.

2 Q. How long have you made cider?

(Counsel for the complainant objects to the examination of witness as to prior knowledge or use on the ground that his name, place of residence, and place of use are not set up in defendant's answer.)

318 The further examination of witnesses in the above-entitled cause is adjourned until Friday morning, April 28th, at ten o'clock in the forenoon.

[L. S.] EDWARD W. RANKIN,
Special Examiner and Notary Public in and for Albany County, New York.

Circuit Court of the United States, Northern District of New York.
In Equity.

THE CLARK POMACE HOLDER COMPANY
ag't
WILLIAM H. FERGUSON.

Examination of witnesses for the defendant, taken before Edward W. Rankin, special examiner and notary public, pursuant to adjournment, on the 28th day of April, 1882, at 10 o'clock a. m.

Defendant's counsel desires to amend his answer herein by adding to the end of the twentieth paragraph thereof the names of the following persons who have used the device mentioned in the patent in this complaint more than two years prior to the application of said John Clark for said letters patent, together with the residences of said persons, and also the places where the said persons have respectively used said device; also the names and residences of persons who have known of the use by others of the device claimed in said letters patent for more than two years prior to the application for said letters patent, together with their residences and the name

of the or places where they know said device to have been used as aforesaid by persons other than John Clark and the Clark Pomace Holder Company, to wit:

George C. Valentine; residence, Charlton, Saratoga county, State of New York, who has used the same since about the year 1869, at said Charlton.

319 John Chambers, also of said Charlton, and at said Charlton, since about 1870.

William L. Hoyt, also of said Charlton, and at said Charlton, since about 1870.

Gideon L. Valentine, also of said Charlton, who has knowledge of said device having been used at said Charlton.

Edward Merchant, also of said Charlton, who has knowledge of said device having been used at said Charlton.

Eli Closson, also of said Charlton, who has knowledge of said device having been used at said Charlton.

Stephen Reed, of Visscher's Ferry, Saratoga county, N. Y., who has used said device at said Visscher's Ferry since about 1871.

George Race, Norwich, Chenango county, N. Y., who has used said device at said Norwich.

E. G. Dow, whose first name is believed to be Ephraim, of Sherburne, Chenango county, N. Y., who has used said device at said Sherburne.

Guile and Mead, of and at said Norwich, who have used said device.

M. Sala, of and at said Sherburne, Chenango county, N. Y., who has used said device.

J. Nearing, of and at Sherburne, Chenango county, N. Y., who has used said device.

Charles H. Strowzer, of Webster, Monroe county, N .Y., who has knowledge of said use at said place.

G. W. Litchfield, of North Scituate, in the State of Massachusetts, who has used said device at said place.

Mathew A. Rue, of and at Cranberry, in the State of New Jersey, who has used said device.

Thomas Cox, of and at Willoughby, Lake county, Ohio, who has used said device.

Mr. Pleasemton, whose first name is unknown, of and at Mulberry Corners, in the State of Ohio, who has used said device.

320 Clark Morells, of and at Willoughby, Lake county, Ohio, who has used said device.

Warren Gilbert, of and at Mentor, Lake county, Ohio, who has used said device.

W. H. Hite, of and at Benton Heights, Erie County, Ohio, who has used said device.

W. Warthen, of and at Sandawn, N. J., who has used said device.

John Cary, of Howe's Cave, Schoharie county, N. Y., who has knowledge of the use of said device at Howe's Cave, Schoharie county, N. Y.

James Stoner, of Howe's Cave, Schoharie county, N. Y., who has knowledge of the use of said device at said Howe's Cave.

James Patterson, of Schenectady, N. Y., who has knowledge of said device having been used at said Howe's Cave.

John Mills, of Schenectady, N. Y., who has knowledge of the use of said device at Schenectady, N. Y.

And also to amend the seventeenth paragraph of said answer by inserting between the figures "1874" and the word "prior" the following:

And also in letters patent No. 50665, dated October 24, 1865, granted to C. H. Thomas.

Also in letters patent No. 117,075, granted to Jonathan Holbrook July 18, 1871.

Counsel for complainant consents to this amendment on condition that the evidence for the defense-in-chief be closed on or before the 15th of June, 1882.

Counsel for complainant, on said conditions, withdraws his objection to question No. 2, propounded to the witness, George C. Valentine, on April 27, 1882.

Continuation of the testimony of said GEORGE C. VALENTINE:

Question No. 2 is now repeated to witness.

321 A. I might say I have always been round a cider mill; I have been a practical cider maker about fifteen year-.

3 Q. In what place have you manufactured cider during — past fifteen years?

A. In Charlton.

4 Q. Have you been in business on your own account as cider maker, and if so, for how long?

A. For the last fifteen years.

5 Q. Do you fully understand the business of manufacturing cider and the machinery, tools, and implements used in making cider?

A. Yes.

6 Q. What appliances have you used in making cider?

A. I have used the crib and slats.

7 Q. What else?

A. I have used cloths, and use them now, and slat-racks and forms.

8 Q. Please describe the form you have used.

A. I have used a form made of pine four inches deep; it is four feet and three-quarters inches long, three feet five and three-quarters wide; this form has a ear out, or support, that reaches the post and holds it in its place, with a brace from that support back to the corner of the form; the form has a corner block outside to stiffen it; the measurements I have given are of the inside.

8 Q. Have you given a full description of this form?

A. I think I have, with the exception of a little cleat on the ear, which follows the post.

9 Q. How long have you been accustomed to using this form?

A. I cannot tell exactly, since I have used this new form which I have described.

10 Q. About how long?

A. I think since about the latter part of the year 1870.

11 Q. What form did you use before that?

A. I used one made of 6-inch stuff.

12 Q. Give a little more description of it.

A. It was of the same plan as the one just described, except in width and size; I mean the six inches in height.

322 13 Q. Had you used this form you have just described immediately prior to the one you first described?

A. Yes, sir.

14 Q. Please state, if you can remember, when you first began to use this form which you say was about six inches deep, and which you have secondly described.

A. It was about a year.

15 Q. Are the two forms you have just described the only forms you have used in your cider-making business since 1869?

A. They are.

16 Q. And you are continuing to use the one which you made second at the present time?

A. Yes, sir.

17 Q. Please state what rack you used in the beginning, and describe each successive rack you have used in cider making down to the present time?

A. The first could not be called a rack; it was some strips laid between the layers—strips of board, narrow ones; that was all there was of that; the next that I made I nailed them together and made it double slats running both ways, and I used them right along till, I think, it was about the second or third year, the slats began to come off, and then I made them single.

18 Q. When did you first commence to use loose slats?

A. I think it was in 1869.

19 Q. How long did you continue to use loose slats?

A. Only, I think, one or two cheeses.

20 Q. How long would that be?

A. I think it was two or three days.

21 Q. When did you commence to use the double rack that you speak of?

A. I think it was in 1870, the next year.

22 Q. How long did you continue to use the double rack?

A. Until the slats came off; as they came loose I kept taking them off.

23 Q. How long was that?

A. I think two or three years; some of them are on yet.

323 24 Q. When did you first commence to use the single rack?

A. I think it was about three years—betwixt two and three years; I can't tell exactly about the date of that.

25 Q. Do you mean two or three years after commencing to use the slats?

A. After using the double ones.

26 Q. Can you give the size of the rack that you used?

A. Four feet and ten inches long and four feet wide. They might vary a trifle. I ain't much of a carpenter. I made them myself.

27 Q. Please state what cloths you used in your business of cider making.

A. I used what they called burlaps, and I tried muslin—cheap muslin.

28 Q. When did you first commence to use cloth or cloths in your business of cider making?

A. In 1869.

29 Q. Have you been in the habit of using cloth or cloths in your business of cider making since 1869?

A. I have.

30 Q. Did the racks that you have spoken of as having been used by you extend underneath and beyond the form?

A. They did.

31 Q. Please state your manner of laying up cheeses in 1869 and also how you have continued to lay them up continuously since then.

A. In 1869 I first laid my form and then I put my cloth on; the cloth was burlaps; I then folded it in and took my form off; I meant to have said I put the pomace in and folded my cloths; I took my form off and laid some strips, then I put my form on, laid my cloth again, filled it with pomace, and proceeded as before until I had my cheese up; since then I have laid them with a rack and form and cloths and filled it with pomace, folded it over—folded the cloth over; I continued to do the same till I got my cheese up.

32 Q. When did you first begin to use racks, cloths, and form in combination in your business as a cider maker?

A. In the year 1870.

324 33 Q. Have you continuously used racks, cloths, and form in your business as cider maker since that time?

A. I have.

34 Q. Have you used muslin?

A. Yes; I tried it, and used it as long as it held—that is, not the whole cheese, but enough to try it.

35 Q. In using the burlaps, would you use one piece sufficiently large to envelop the whole layer of pomace when turned over?

A. Yes, sir.

Cross-examination of witness by Mr. WARD, counsel for complainant:

36 Q. You say you have been making cider on your own account about fifteen years?

A. Yes, sir; about that, I think.

37 Q. Where were you born?

A. Charlton.

38 Q. What is or was your father's business?

A. My father's business was a farmer and cider maker; he is dead.

39 Q. Did he own the farm on which you now live?

A. Yes.
40 Q. And you was born and brought up on that place?
A. Yes.
41 Q. How large a farm is it?
A. About 130 acres.
42 Q. About how much cider do you make a year?
A. Well, it varies, according to the crop of apples; sometimes it is from 200 to 600 barrels.
43 Q. When did your father die?
A. I think about twenty-seven years ago.
44 Q. Do you know in what year?
A. I think it was in 1854 or 1855; I think it was 1855.
45 Q. How do you arrive at that?
A. I am of that impression that he has been dead twenty-seven years.
46 Q. You think that he died in 1855, because twenty-seven from 1882 makes 1855?
A. I had not figured it in that way.
47 Q. Is your mother living?
A. Yes.
325 48 Q. On the farm?
A. She is living with me.
49 Q. Are you a married man?
A. Yes.
50 Q. How long have you been married?
A. Two years last December.
51 Q. Do you own the farm?
A. Yes.
52 Q. And have a deed of it?
(Objected to on behalf of the defendant as wholly immaterial.)
A. I have.
53 Q. In what year did you obtain the deed of the farm?
(Same objection.)
A. In different years.
54 Q. State the different years.
(Same objection.)
A. I think the first heir that I bought out was in 1867, I think it was. I bought part of the farm at private sale in 1879.
55 Q. Had you received any deed between those two dates?
(Same objection.)
A. Yes.
56 Q. State the dates of all the deeds you have received.
(Same objection.)
A. I do not know as I can give the exact dates.
57 Q. Give the years.
(Same objection.)

A. I think between 1871 and 1872 I received a referee's deed.

58 Q. Have you given all the deeds you have received?

(Same objection.)

A. No; I think about the same years I received another deed; in 1878 I received another; I guess I received two that year.

59 Q. Is the cider mill on this farm — property?

A. Yes.

326 60 Q. And these deeds you refer to cover the cider mill with the rest of the property.

(Same objection as last above.)

A. They do.

61 Q. When did you first assume control of the farm with the cider mill?

(Objected to as immaterial.)

A. Well, sir, I have controlled the property and managed and worked there for sixteen or seventeen years, and perhaps longer.

62 Q. Have you always managed it on your own account since sixteen years ago?

(Objected to as immaterial.)

A. I have not the farm, but have the cider mill.

63 Q. When was the first year that you run the cider mill on your own account?

A. Eighteen hundred and sixty-six or 1867, or along there.

64 Q. Is that the most definite you can give?

A. I could give you definite if I could look at my books at home; that is as definite as I can be now.

65 Q. Do you keep a set of books in your cider business?

A. I keep books, not a set of books.

66 Q. Do you keep books showing all your cider business?

A. No.

67 Q. Do you keep books showing your principal accounts and dealings in the cider business?

(Objected to by counsel for defendant as immaterial.)

A. I keep books showing my principal sales; I keep account of my principal sales.

68 Q. Can you produce those books showing your sales from 1866 to 1874 or any of those years?

(Objected to by counsel for defendant as immaterial, and defendant's counsel here states that, inasmuch as the complainant and its counsel have insisted as a condition of the amendment of the answer that the defendant must close his testimony on or

327 before a certain day, that the complainant's counsel is acting improperly and to the detriment of the defendant by prolonging the examination of this witness by asking questions which are wholly immaterial and irrelvant to the issues of this case, and defendant's counsel now gives notice to complainant's counsel that

if immaterial questions are continued to be put to witnesses for the defense by the complainant's counsel and the defendant shall be thereby damaged by reason of not having sufficient time to put in his whole testimony, that defendant's counsel will move the court or further and additional time after the 15th of June, 1882, in which to complete the testimony of defendant.)

(Complainant's counsel states that he and the complainant have always been ready to attend all examinations asked for by the defense, and have attended three adjourned hearings, and that defendants neglected to proceed, and complainants' shall insist in a full and fair cross-examination of every witness produced by the defense affecting the case, and that they will further insist on the stipulation.)

A. I can produce them for some years; I can't say what ones; I can't say just what years are out.

69 Q. What kind of a press was in the cider mill when you first took charge of it on your own account?

A. Two screw presses.

70 Q. What power did you work them with?

A. Hand power.

71 Q. Do you use those screws yet?

A. Yes.

72 Q. How did you grind your apples at that time?

A. With a grater.

73 Q. Were the screws and grater in the mill already when you took charge of it?

A. Yes.

74 Q. How did you press the pomace?

A. With the screws.

75 Q. How did you lay up the cheeses?

A. When I first went at it we laid them up in straw.

328 76 Q. How long did you continue to use straw?

A. I think I might have continued to use straw on one press as late as 1872, and it might not be.

77 Q. In what manner did you lay up with straw?

A. In the first place I went and had my press bottoms grooved; then I laid a board over that groove and set up my cribs, laid in my straw, then laid in the pomace, then another layer of straw, then another layer of pomace, and finished the cheese up in that way.

78 Q. Did you use both presses in the same manner?

A. When I first commenced making cider I did.

79 Q. Did you press the cheeses inside of the crib?

A. Yes.

80 Q. How deep was the crib?

A. Some three and a half feet, I should think; they vary a little.

81 Q. How long had you been acquainted with making cider in this mill previous to taking hold of it?

A. All my life—as long as I could remember.

82 Q. How long had those cribs been used?

A. They had been fixed before father died.

83 Q. Had you always assisted before you took control?

A. Yes; as much as a boy could help.

84 Q. How long did you use the cribs in that form after you took control of it?

A. Somewhere—I think some six or seven years; whenever we made — we used them.

85 Q. Did you ever use anything between the layers?

A. Except straw, I never did.

86 Q. Did you continue to use the cribs on both presses for six or seven years?

A. I think not. I used them longer on one press than I did on the other.

89 Q. How much longer on one press than on the other?

A. I think somewhere about two years—two seasons.

329 90 Q. What was the first change made from using the cribs?

A. I used a form and slats or sticks laid between the layers.

91 Q. Did you ever use any cloths with the crib?

A. No, sir.

92 Q. Did you ever lay up cheeses with straw and the form?

A. No, sir.

93 Q. When did you first use a form?

A. I think it was in 1869.

94 Q. How did you lay up with a form?

A. I put my form on, laid my cloths, put in the pomace, folded the cloths over, took up my form, laid sticks or slats on and form and cloths as before until the cheese was completed.

95 Q. How many sticks did you lay between the layers of the cheese?

A. Well, sir, I do not think I could tell the exact number.

96 Q. As many as three?

A. O, yes, sir; more than that.

97 Q. As many as a dozen between each layer?

A. Yes; I should think so.

98 Q. What kind of slats?

A. I should think a little of all kinds, if you mean kinds of wood; there were some pine and some hemlock.

99 Q. What shape were the slats?

A. As they were not—; they were not all the same size; they were just as I could get them out.

100 Q. What do you mean by getting them out?

A. To rip them up.

101 Q. You sawed them out yourself?

A. Yes.

102 Q. How many layers did you make in each cheese at that time?

A. I think it was some seven or eight.

103 Q. Where did you first get the idea of laying up cheeses in this way?

A. I got it from seeing cheeses laid up with a cloth.

104 Q. Where had you seen cheeses laid up with a cloth?

A. At Mr. Tobey's.

105 Q. Where is that?

A. At Glenville, Schenectady county.

330 106 Q. Did he use slats between the layers?

A. No, sir.

107 Q. How did he lay up?

A. I think he had a form of some description and laid up in that.

108 Q. Within racks or cribs?

A. I could not tell as to that; I did not see him lay it up.

109 Q. Did he have any racks between his layers?

A. No, sir. I did not see any racks.

110 Q. When was this?

A. I think it must have been the same fall.

111 Q. What fall?

A. Of 1869, I think.

112 Q. What was there about that to give you the idea of putting slats between the layers?

A. That he was forcing the cider through the edge of the cloth and that I thought that if there was something laid in between these it would press out easier.

113 Q. You had always used cribs and straw up to that time?

A. Yes.

114 Q. Had you ever been in Mr. Tobey's mill before?

A. I think I had not. I could not remember exactly as to the year. I might have been there twice in one year.

115 Q. How far do you live from Mr. Tobey's?

A It must be six miles.

116 Q. What time in the year was it that you visited his mill?

A. It was in the fall.

117 Q. What time in the fall?

A. The time I saw him pressing; must have been late in the fall.

118 Q. How late?

A. Well, it must have been along in the cider-making — some time.

119 Q. What month?

A. It must have been in October.

120 Q. Do you remember whether it was October or not?

A. Not as to a certainty.

121 Q. How do you know it was in 1869?

A. I know because I think I tried it in the fall of 1869.

122 Q. Is that the only means you have of knowing?

A. Yes, sir; I think that is the only means I have of knowing.

331 123 Q. You immediately adopted the form and slats?

A. I immediately tried them on one press.

124 Q. Did you continue to use them on that one press?

A. Yes.

125 Q. Using them on one press and a crib on the other?

A. Yes.

126 Q. How long did you continue to use them on one press?

A. I used them that fall, and the next fall I made them double.

127 Q. What size cloths did you use that fall?

A. I got just common burlaps and sewed them together.

128 Q. How large cloths did you use after they were sewed together?

A. I think it was about a yard wide, and the length I can't tell you exactly.

129 Q. Where did you get these cloths?

A. I think I got them in Troy.

130 Q. How much cider did you make that fall?

A. Well, I couldn't tell; it might have been forty or fifty casks.

131 Q. How much did you make with this press with the form and slats?

A. I think it was about three cheeses; I did not measure the cider.

132 Q. Have you given the only sources from which you derived the idea of using form slats and cloths?

A. I think I have; I might have seen the cloths in presses, but no slats at that time.

133 Q. Who made your guide-frame for you?

A. I made it myself.

134 Q. From where did you get the idea of making that?

A. From using a crib rack and seeing a form used for laying up old-fashioned cheeses.

135 Q. Who helped you make cider the fall you first used this?

A. Well, sir, I think that his name was—I do not know as I could tell you now the man's name; I have had so many different men different falls that I could not distinguish who I had that particular fall.

332 136 Q. Did you ever see racks inside of a crib between the layers of cheese?

A. I think I have.

137 Q. When was the first time that you saw them so used?

A. I don't think I can tell just the year; it was after I first used them, and I can't tell just how they used them.

138 Q. How long did you continue to use a crib on one press after using a form on one?

A. About two years; until I got it working right.

139 Q. Until you got what working right?

A. Until I got the form and racks working right.

140 Q. Was that more than two years?

A. I don't think it was.

141 Q. How large was the first form you made?

A. I could not give you the dimensions; it was smaller than the one that I have now.

142 Q. How long did you use that form?

A. I think only the one fall, just to try those sticks.

143 Q. Who made your double rack for you?

A. I made it myself.

144 Q. Who worked for you that fall?

A. Well, I don't think I can tell.

145 Q. Can you tell any one who worked for you before 1874 and including that season?

A. I don't think I can tell you; I might, if I was home, by looking at my books.

146 Q. Do you think your books show?

A. If there are any of those old books or papers around, I think they would show; I was not as particular then as I am now about such things.

147 Q. What year did you first have both presses at work using racks, form, and cloths in making cider?

A. I think it was about 1871 or 1872; I can't be positive just what year.

148 Q. Will you be positive that you had them both in 1872?

A. Well, I could not be positive just as to that year, but I think I had them in then.

333 149 Q. Will you swear positively that you had them both in and working complete in the season of 1873?

A. Yes, sir.

150 Q. That is the first year that you will swear positively to?

A. Yes; that I had them on both presses.

151 Q. As soon as it was a complete success on the first press you adopted it on the second, did you not?

A. Well, I think it was about that time.

152 Q. Have you ever attended the State fair? * *

A. I think I have; I think I attended the fair at Saratoga Springs.

153 Q. When?

A. I can't tell just the year; I have not thought of it from that day to this.

154 Q. Have you ever attended State fairs at Albany?

A. Yes.

155 Q. Before or after you were using the racks, cloths, and form upon your two presses?

A. After.

156 Q. How long after?

A. Well, it was this last fair they had here.

157 Q. Was that the only fair you attended here?

A. I think I was here once to a fair; I think it was a county fair.

157½ Q. In what year was it?

A. I don't know as I can tell the year; they held a fair somewhere off on the hill here; I was not acquainted much here.

158 Q. Was it the year 1872?

A. I should think it was longer ago than that; if I recollect right, it was quite awhile ago.

159 Q. Before or after you began to use racks?

A. Well, that I could not tell you.

160 Q. Did you see a Boomer and Boschert press there?

A. No, sir; I saw no presses of any kind.

161 Q. Will you be positive that it was not the year 1872 that you attended the fair here?

A. I think it was before 1872.

162 Q. Is that as positive as you can be?

A. Yes, sir.

334 163 Q. How do you fix the date 1869 as the time you made the first form?

A. I fixed it because that was the time there had been part of the farm sold off.

164 Q. Who were the parties to that sale?

A. Mr. Merchant; I think it was the same year.

165 Q. Mr. Merchant was the grantee.

A. Yes.

165½ Q. What was his given name?

A. Edward.

166 Q. You say it was a mortgage foreclosure sale?

A. Yes.

167 Q. Who was the plaintiff?

A. Thomas Morrows and Alexander Gilchrist.

168 Q. Who were the attorneys?

A. I don't think I can answer that.

169 Q. Who was the referee?

A. I think it was Scott—George G. Scott, of Ballston.

170 Q. Who were the defendants in the action?

A. My mother—Euphane Valentine.

171 Q. Give the others, as near as you can.

A. Isaac H. Valentine, Thomas B. Valentine, Frederick Valentine, myself, William A. Valentine, Walter E. Valentine.

172 Q. Who works for you now?

A. A man by the name of Albert Merchant.

173 Q. Who worked for you last fall in making cider?

A. Albert Merchant.

174 Q. Who worked for you the year before in making cider?

A. Frederick Barrett—come to think, his name is Wilfred Barrett.

175 Q. Who worked for you the year before in making cider?

A. I think it was a man by the name of Steenburg.

176 Q. Don't you know?

A. I'm not positive as to the year.

Redirect examination by Mr. KING, counsel for defendant:

177 Q. In answer to question 139, "Until I got the forms
335 and racks working right," did you mean to include the cloths in that—the racks, cloths, and form?

A. Yes, sir; it was more the racks; the cloths worked very well all the while.

178 Q. You state that on one press you used racks, forms, and cloth continuously from about the year 1869 to the present time, and that you used them on both presses, racks, form, and cloths a few years later?

A. Yes, sir.

179 Q. Can you give the exact year when you began to use them on both presses?

A. As near as I can remember, it was about 1871 or 1872.

180 Q. But not later than 1873?

A. No, sir.

181 Q. Did the slats which you said you first used extend beyond the form?

A. Yes, sir; so as to hold the form up from dropping down.

182 Q. Has any agent or officer of the complainant called upon you and demanded a royalty for the use of your device, or made any threat to sue you for using the devices which you have testified to on the ground that it infringes the patent in suit; if so, when did such agent or offices call upon you and make such threat?

A. There has such a man called; I can't tell his name; he gave me a card of Walter E. Ward, Maiden Lane, Albany, N. Y.; attorney, it said on it.

183 Q. When?

A. I think it was in August of 1881; I can't say the exact date.

184 Q. Has suit ever been brought against you by the Clark Pomace Holder Company?

A. No, sir.

185 Q. Has any agent of the Boomer and Boschert Press Company, of Syracuse, N. Y., called at your mill and examined the same, and the mode of making cider by you?

(Objected to by counsel for complainant as incompetent and immaterial.)

A. Yes.

186 Q. When was it that this agent or officer of the Boomer and Boschert Press Company called upon you?

336 (Same objection.)

A. I can't tell exactly when; about 1874 or 1875, or somewhere along there; I can't tell when.

G. C. VALENTINE.

Subscribed and sworn to before me this 28th day of April, 1882.

[L. S.] EDWARD W. RANKIN,

Special Examiner and Notary Public in and for the County of Albany and State of New York.

Defendant's counsel offers in evidence copy of letters patent No. 50665, issued to C. H. Thomas October 24, 1865, marked Defendant's Exhibit No. 1, of April 28, 1882, E. W. R., special examiner and notary public.

Also of letters patent No. 117,075, issued to Jonathan Holbrook July 8, 1871, marked Defendant's Exhibit No. 2, of April 28, 1882, E. W. R., Sp. Ex. and notary.

Complainant's counsel states that he attended before the examiner over an hour this morning in waiting for witnesses; that the defendant's last witness closed his testimony about 5 p. m., and defendant refused and neglected to produce any more witnesses this evening; and complainant's counsel requests the defendant to proceed without any unnecessary delay.

Defendant's counsel states, in the first place, that the examination of witnesses began at 10.50 a. m.; that some time after that was taken up by the amendments; that the testimony of this witness closed at 5.15 p. m.; that he immediately thereafter sent a special

messenger to 65 Quay street, Albany, N. Y., for a witness to be examined this evening, but that the messenger failed to find said witness, and returned making such statement; that the messenger left and returned while the complainant's counsel was before
337 the special examiner, and complainant's counsel heard the order given to said messenger before his departure, and the answer of said messenger upon his return; that neither the defendant nor his counsel have neglected or refused to produce any more witnesses this evening, but, on the contrary, put in additional evidence, as the record will show, and at 5.50 the case was adjourned to 10.30 to-morrow morning; that it also appears by the record that the witness examined to-day resides out of the city of Albany, and the time-table of the railroad by which he arrives at said city shows that the time of arrival of the train is 10.30 in the morning.

The complainant's counsel asks defendant's counsel if the witness referred to was subpœnaed to be present here to-day, or if the witness examined was subpœnaed to be present at 10 a. m., the hour to which the case was adjourned yesterday.

Defendant's counsel states that the witness who was sent for was in the city all day, subject to call, and that the witness who was examined to-day was sworn yesterday, and there was no necessity of subpœnaing him again to-day.

The further examination of witnesses in the above-entitled cause was adjourned until Saturday morning, April 29th, at 10.30 o'clock.

[L. S.] EDWARD W. RANKIN,
Special Examiner and Notary Public in and for Albany County, N. Y.

Circuit Court of the United States, Northern District of New York.
In Equity.

THE CLARK POMACE HOLDER COMPANY
ag't
WILLIAM H. FERGUSON.

338 Examination of witnesses for the defendant, taken before Edward W. Rankin, special examiner and notary public, pursuant to adjournment, on the 29th day of April, 1882.

The parties appeared, the complainant by W. E. Ward, its counsel, and the defendant by Wm. H. King, his counsel.

GIDEON L. VALENTINE, sworn as a witness for the defendant, did testify, in answer to questions, as follows:

1 Q. Please state your name, age, residence, and occupation.

A. Gideon L. Valentine; I will be fifty-four on the fourth day of next month; I reside at Charlton, Saratoga county, State of New York; I am a farmer.

2 Q. How long have you been living at Charlton?

A. I have lived there all my life, except between 1854 and 1863, and have continuously lived there since 1863.

3 Q. Do you know Mr. George C. Valentine, of Charlton?

A. I know him well.

4 Q. How near does he live to you?

A. About three-quarters of a mile around the road.

5 Q. Does his and your farm adjoin each other?

A. Yes.

6 Q. Do you know whether or not Mr. George C. Valentine has a cider mill upon his farm?

A. He has.

7 Q. Do you know for how long a time Mr. Geo. C. Valentine has carried on the business of cider making at the mill on his farm?

A. I think it was in 1868 and 1869 that he went into the business there for himself. Before that his brothers were with him. There has always been a cider mill on the farm since I was born; I won't be positive, but I think it was 1868.

8 Q. Have you been in the habit of drawing apples to this mill; and, if so, for how long?

A. I have, and since 1872.

339 9 Q. Was Mr. George C. Valentine the owner of that mill then?

A. Yes, sir.

10 Q. Have you been accustomed to visiting the mill every year since 1872?

A. Yes, sir.

11 Q. Did you in 1872 and have you since that year seen the manner in which cider was made in Mr. Valentine's mill at Charlton?

A. Yes, sir.

12 Q. Please give a statement of the manner in which cider was made by Mr. Valentine at his mill in the year 1872?

A. Well, he had slats laid together, something after the style of Defendant's Exhibit No. 1, of December 5, 1881; he had a form, a square box without any top or bottom to it, about six inches deep, I should think; he would put in burlaps in these, put in the pomace till the box or form was full, turn the burlaps on, lay on a rack, take the form off, put on his rack, and continue on till he got his cheese as high as he wanted.

13 Q. Did the racks extend underneath and beyond the form?

A. They extended out far enough to hold up the form.

14 Q. About what was the size of this form?

A. O, I should think about four feet square.

15 Q. Upon how many presses did you see this form, rack, and cloths used in making cider?

A. I have been there when there was one and have been there when there was two.

16 Q. Have you seen the racks, form, and cloths used by Mr. Valentine at his mill at Charlton in making cider continuously since 1872?

A. I have, except last year.

17 Q. Will you please give the time of the year in 1872 when you saw the racks, form, and cloths used by Mr. Valentine at his mill at Charlton in making cider?

A. In November.

18 Q. Was it common report among the neighbors of Mr. George C. Valentine at Charlton in the year 1872 and the years subsequent thereto that he was using in his business as cider making, in laying up his cheeses, a rack or racks, form, and cloth or cloths?

340

(Objected to by counsel for the complainant as irrelevant, immaterial, inadmissible, and as hearsay evidence, and as leading.)

A. It was.

19 Q. Please state what was said by the neighbors about the use by Mr. Valentine of racks, form, and cloths in making cider?

(Objected to by the counsel for the complainant as irrelevant, immaterial, and as hearsay.)

A. They thought it made the cider a good deal clearer through cloths instead of through straw.

Cross-examination of witness by Mr. WARD, of counsel for complainant:

20 Q. How long have you lived on the farm adjoining the one on which George C. Valentine now lives and has his mill?

A. Ten years this spring.

21 Q. Where did you live before that?

A. About a mile and a half, at Charlton, about two years before that.

22 Q. Do you mean for two years before 1872?

A. Yes, sir.

23 Q. Do you own the farm on which you now live?

A. Yes, sir.

24 Q. Did you take a deed for it in 1872?

A. Yes, sir.

25 Q. From whom?

A. James M. Budd.

26 Q. Was it recorded in Saratoga county clerk's office in that year?

A. Yes, sir.

27 Q. Did you take possession of the farm in that year?

A. Yes, I did; some time in April—the sixth, seventh, or eighth; some where along there.

28 Q. And have lived on the farm ever since?

A. I have been there ever since.

29 Q. About how many acres are there on the farm?

A. About 125.

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30 Q. Did you take apples to Mr. Valentine's cider mill the first year?

A. Yes, sir.

31 Q. How many presses did he use cloths on that year?

A. Well, he had it on one that year.

32 Q. How did he lay up on the other press?

A. He did not use only the one press the time I was in there then; the other press was empty.

33 Q. Had you ever been in the mill before?

A. Yes, sir.

34 Q. When?

A. A great many times.

35 Q. And seen them make cider there before?

A. Yes, sir.

36 Q. Often?

A. Yes, often.

37 Q. What relation are you to George C. Valentine?

A. Own cousin. He lives on what used to be my grandfather's place, and consequently it was natural I should be there often.

38 Q. How were cheeses laid up prior to 1872 in his mill?

A. They were laid up in cribs. I would not say that exactly, for there were two years when I was in the village and did not see the mill.

39 Q. Describe the method of laying up cheeses when you had been in the mill before 1872.

A. Before they got to using cloths they always laid them up in cribs, using rye straw; they put in a layer of rye straw and then pomace, doubled the straw down, put on more straw, put in more pomace until they got the crib full for the cheese.

40 Q. How many times were you in the mill in the cider-making season of 1872?

A. I couldn't tell you exactly; I might have been there five times in the season, and maybe more.

41 Q. Will you swear you were there as many as five times?

A. Yes; I will swear I was there as many as five times.

42 Q. Were they using racks and cloths each one of these times?

A. Yes; on one press.

342 43 Q. Did you see them laying up cheeses in 1872 on that one press?

A. I have seen them lay up part of cheeses, not a whole cheese; I have seen them lay up enough to know how they did it.

44 Q. Did you see them using racks and cloths in laying up cheeses as many as five times in 1872?

A. I don't think I did.

45 Q. How many times did you?

A. I never stopped but once to see it was done; after I know how a thing is done I don't stop to see how it is done a second time.

46 Q. How many rings did you see laid upon a cheese?

A. I did not count them; I don't know how many there was.

47 Q. How many racks did you see?

A. I did not count them; I saw a number of them; I did not know that it would be necessary for me to count them.

48 Q. How many racks can you now remember of seeing?

A. I can't tell you anything about how many there were.

49 Q. Did you see the other press in use that fall?

A. No; not that fall.

50 Q. Were the racks which you saw nailed together similar to

Exhibit of Defendant No. 1, of December 5, 1881, E. W. R., Sp. Ex. and notary?

A. They were.

51 Q. Were you in the mill in 1873?

A. Yes.

52 Q. What was then used in pressing cider?

A. They were using racks and cloths, and have not used anything else since.

53 Q. How many presses were they using racks and cloths on in 1873?

A. They have two presses in the mill; some of the time they used both; some of the time only one.

54 Q. Did they use racks and cloths on both in 1873?

A. Yes.

55 Q. Who was to work for George C. Valentine in 1872?

A. I could not tell you.

343 56 Q. Did you know at the time?

A. Yes; I always knew every one who worked for him at the season.

57 Q. Can you tell any one who worked for him up to and including 1874 in making cider?

A. Abram Whitbeck.

58 Q. When did he work for him? Can you tell the year?

A. He was there two years.

59 Q. Where does he reside now?

A. I don't know.

60 Q. Can you tell of any one else?

A. As far back as that, I don't know as I could.

61 Q. Did you ever see George C. Valentine use loose slats between the layers of pomace in making cider.

A. I don't know that I ever did.

62 Q. Will you swear that you did not see him use loose slats since 1872?

A. Yes; I'll swear that I did not.

63 Q. Did the racks that you saw him use in 1872 extend beyond the bottom girts of the form?

A. Yes; it extended beyond the form enough to hold the form up.

64 Q. Did they extend outside the form?

A. Yes; I think they did.

65 Q. How many racks did you see in actual use in a cheese?

A. I didn't count them to know how many there were, but see enough to lay up his cheese.

66 Q. Will you swear you saw as many as three racks in actual use with pomace on in the cheese, under the press, on top of the platform of the press?

A. Yes; I could swear there was more than a dozen.

67 Q. Will you swear there were as many as fifteen?

A. No; I wouldn't.

68 Q. Have you taken apples to the mill ever since?

A. Yes; except last year.

69 Q. You say that it was the common report among the
344 neighbors in 1872 that Geerge C. Valentine was using racks, forms, and cloths in making cider?

A. Yes.

70 Q. Who did you hear speak of it?

A. Lorenzo Taylor, Eli Closson.

71 Q. Who else?

A. Cider men.

72 Q. What cider men?

A. John Chambers for one, Leander Hoyt; I don't remember any one else now.

73 Q. What did you hear Lorenzo Taylor say about it?

A. He said it made the cider clearer; there were not so much settlings in the bottom.

74 Q. Did you hear Taylor say anything about racks?

A. Yes; he said he thought it was quite an improvement.

75 Q. Did he explain how the racks were used?

A. No; I don't know that he did at the time.

76 Q. What did Mr. Taylor say about the racks? Repeat the conversation which you had with him in 1872 concerning the racks, as near as possible.

A. Well, I can't say; there was a great deal said; only that he thought it was quite an improvement on making cider from what they used to do.

Redirect examination by Mr. KING, of counsel for defendant:

77 Q. What was the construction of this crib you testified of?

A. There were two, sometimes three, frames made with slats nailed on the inside, the slats standing upright; you could take the frame apart; it came apart at every corner; it had to be taken apart when you took the cheese out.

78 Q. When did you first see a crib of the description you have have just given used in cider making, and where?

A. In 1844 in mill now owned by George C. Valentine; I worked there at that time; George C. Valentine's father owned it at that time.

79 Q. When did you last see a crib used?

A. I can't tell; I have seen one in Chamber's mill within a short time—within a few years.

345 80 Q. Did you or did you not see forms used in connection with racks and cloths in the mill of George C. Valentine in 1872 and subsequently to that year?

A. Yes.

81 Q. How many years have you seen a form used in making cider?

A. For over ten years; ten years last fall.

G. L. VALENTINE.

Subscribed and sworn to before me this 20th day of April, 1882.

[L. S.] EDWARD W. RANKIN,
Special Examiner and Notary Public.

JOHN A. CHAMBERS, called as a witness for the defendant, and being first duly sworn, did testify as follows in answer to questions:

1 [Q.] Please state your name, age, place of residence, and occupation?

A. John A. Chambers; age, fifty, past; I reside at Charlton, Saratoga county, N. Y.; I am a farmer and cider maker and justice of the peace.

2 Q. How long have you lived at Charlton?

A. I have lived there all my life, except seven years, when I was a boy. I went to Galway about the year 1843 and came back about 1850, and remained in Charlton ever since.

3 Q. How long have you been in the business of cider making?

A. Twenty-two years.

4 Q. Please state your manner of laying up cheeses in your business of cider making and how long you have laid up cheeses in the way you designate?

A. From the time I commenced up to 1872 I laid up with straw in a crib; since 1872 I lay up with a cloth and racks in a crib, excepting two cheeses in the fall of 1872, which I laid up with a form and cloth and rack.

5 Q. Please describe the form which you used in 1872.

346 A. It was made out of boards six inches wide, about four feet square. The width of the boards would be the depth of the form, the boards standing on the edge, without top or bottom, and joined at the corners.

6 Q. Please describe the racks which you used in 1872.

A. The racks were made out of lath- laid crosswise and nailed together, similar to "Defendant's Exhibit No. 1, of December 5, 1881. E. W. R., Sp. Ex. and notary."

7 Q. Did the rack extend beyond, or, in other words, was it larger than the form upon it?

A. It was a little larger, so as to hold up the form upon it.

8 Q. What sort of cloth did you use 1872?

A. Burlaps.

9 Q. Do you know Mr. George C. Valentine, of said Charlton?

A. Yes.

10 Q. How long have you known Mr. George C. Valentine?

(Objected to by counsel for complainant as incompetent and immaterial.)

A. I have known him ever since he was a small boy; twenty-five years anyway.

11 Q. How did you first come to lay up your cheeses with the form, rack, and cloths?

A. I got the idea from George C. Valentine. I saw one of his presses after it was laid up.

12 Q. When was this?

A. It was either the fall of 1870 or of 1871; I think it was 1871.

13 Q. How did Mr. George C. Valentine lay up his cheeeses in 1870 or 1871, when you saw it?

(Objected to by counsel for complainant as inadmissible under the pleadings; that witness is not named in the answer or in the amendment thereto as a witness having prior knowledge or as a witness of knowledge of prior use of the patent in suit.)

(Defendant's counsel calls the attention of the complainant's counsel to the amendment made on the 28th day of April, 1882.)

347 A. It was laid up with the form cloth and rack.

14 Q. Please give a detailed statement of the way in which Mr. George C. Valentine did it in 1870 and 1871?

A. I did not see him lay it up, but I know how it was done; he laid down his form, put on his cloth, a rack probably at the bottom on the platform; then put your pomace in, fill up your form with the pomace; then turn the cloth over, raise the form, and put on a rack, and so continue till your cheese was completed.

15 Q. Was it common report among the neighbors of Mr. George C. Valentine, at Charlton, in the year 1872, and the years subsequent thereto, that he was using in his business as cider maker, in laying up his cheeses, a rack or racks, form and cloth or cloths?

(Objected to by counsel for complainant as incompetent and immaterial.)

A. Yes, sir.

16 Q. Please state what was said by the neighbors about the use, by Mr. George C. Valentine, of racks, forms, and cloths in making cider?

A. The opinion was that it made nicer cider—clearer, with less sediment.

Cross-examination:

17 Q. You did not see any cheeses laid up in Mr. Valentine's mill before 1872?

A. Not with cloth; the one I had reference to was laid up with a cloth and rack.

18 Q. You didn't see any form used with it?

A. No; I didn't see him lay it up; I saw the form there; he told me how he laid it up.

(Complainant's counsel moves to strike out the last sentence of the answer as not responsive to the question.)

19 Q. Is that the only place that you saw the racks and cloths used before you used them yourself in 1872?

A. It was the only place.

348 20 Q. You never saw the form used in connection with racks and cloths before you used them yourself, as before stated?

A. I never saw them used; not to see them used; I wasn't there when he laid up the cheese.

21 Q. Have you stated the only common report there was among the neighbors in reference to George C. Valentine using racks and cloths, and the whole of it?

A. That was all.

22 Q. How many rings or layers were there on the cheese which you saw at the mill of George C. Valentine at the time before stated?

A. I did not count them, but I should judge, from my recollection, that there were anyways from ten to fifteen; that is my impression.

23 Q. How many racks did you make and use in the trial you made in 1872?

A. I should think probably from ten to twelve or fifteen; enough to lay up a cheese.

24 Q. Is that as positive as you can be?

A. Yes; it so long ago I don't remember.

25 Q. How do you fix the date 1872 as the time when you made the trial of the racks, form, and cloths?

A. It was the fall that Horace Greeley ran for President; and the way I remember I spoke to a carpenter who was at work for a neighbor of mine building a barn about making some hard-wood slats for the racks.

26 Q. Who was this neighbor?

A. Rensselaer Hall.

27 Q. He built a new barn?

A. Yes.

28 Q. Who was the carpenter?

A. Andew Y. Van Vorst.

29 Q. Where does he live now?

A. Near Charlton village.

30 Q. Was he the boss carpenter?

A. He was.

31 Q. Did he get out your slats?

A. No, sir.

349 32 Q. What is there in that barn, and Van Vorst, and Horace Greeley running for President, in connection with the racks and cloths, to fix the date with the date that Horace Greeley ran for President?

A. This was on election day. There was four of us that I remember now were there together, and one of the party spoke up and said let's go and vote, and somebody spoke about how we were going to vote. The polls were near by, and one of the party had Greeley tickets, and we all four took Greeley tickets and voted them. Part of us were Republicans and part of us Democrats.

33 Q. What is there in voting for Greeley to fix the date of getting out slats?

A. Nothing, except that I went to see the carpenter, and it was on election day, and we all went and voted.

34 Q. Do the carpenter and you vote at the same polls, and have you since that time?

A. Yes; on election day.

35 Q. Who got out your slats for you?

A. I got them out myself.

36 Q. What did you do with these racks after using them in these two cheeses you have spoken of?

A. I laid them one side or else used them in my cribs; I don't know which.

37 Q. You might have used them in your cribs?

A. Yes; I might have.

38 Q. Did you use the same cribs after as before this trial?

A. Yes.

39 Q. What size are these cribs?

A. About three and a half to four feet. They are a little longer one way than they are the other.

40 Q. These two cheeses that you have spoken of, upon which you used racks, cloths, and forms, were they simply as an experiment to try how you would like that manner or system?

(Complainant's counsel requests the special master to put
350 upon the record the remarks of the counsel for defendant: "Now you [are] caught." These remarks were made to counsel for complainant.)

A. They were.

JOHN A. CHAMBERS.

Subscribed and sworn to before me this 29th day of April, 1882.

[L. S.] EDWARD W. RANKIN,
Special Examiner and Notary Public in and for Albany County, N. Y.

The further examination of witnesses in the above-entitled cause adjourned until Monday, May 8, 1882.

It is consented that Edwin G. Day be substituted as special examiner herein except when a stenographer is employed.

[L. S.] EDWARD W. RANKIN,
Special Master and Notary Public in and for Albany County, N. Y.

Circuit Court of the United States, Northern District of New York.
In Equity.

THE CLARK POMACE HOLDER COMPANY
ag't
WILLIAM H. FERGUSON.

UNITED STATES OF AMERICA,
State of New York, City and County of Albany, } ss:

I, Edward W. Rankin, special examiner, duly appointed in the above-entitled cause under the sixty-seventh rule, in equity, as amended, and notary public in and for the county of Albany and State of New York, do hereby certify that I attended at my
351 office, No. 31 North Pearl street, Albany, N. Y., at the several times in the foregoing testimony mentioned, and was there attended by W. E. Ward, of counsel for the complainant, and William H. King, of counsel for defendant, and the oral examination of witnesses for the defendant then proceeded in their presence and was taken down by me in writing and signed by the witnesses pro-

duced before me in the presence of said counsel, which said testimony is also signed by me.

And I further certify that I am not of counsel nor attorney for either of the parties to the said suit in the above caption mentioned, nor in any way interested in the result.

In testimony whereof I have hereunto set my hand and seal this 29th day of April, in the year of our Lord 1882, and of the Independence of the United States the one hundred and fifth.

[L. S.] EDWARD W. RANKIN,
Special Examiner and Notary Public.

United States Circuit Court, Northern District of New York.

THE CLARK POMACE HOLDER COMPANY
ag't
WILLIAM H. FERGUSON.

SAME *ag't* LEONARD WALLEY.

SAME *ag't* WILLIAM L. VAN AUKEN.

It is hereby consented and agreed between the parties to the
352 above-entitled action that Edwin G. Day be the examiner *pro hac vice* to take the testimony on behalf of the several defendants in the above-entitled actions, respectively, with all the rights and powers of an examiner regularly appointed, and that the testimony so to be taken before him be the testimony of the said several defendants in said several actions, respectively, said testimony to be used at the final hearing in the above-entitled actions, and that an order to that effect be entered, if necessary, without notice.

Dated Albany, N. Y., May 6, 1882.

W. E. WARD,
Solicitor for Complainant.
WM. H. KING,
Solicitor for Def'ts, Respectively.

Circuit Court of the United States, Northern District of New York.
In Equity.

THE CLARK POMACE HOLDER COMPANY
ag't
WILLIAM H. FERGUSON.

STATE OF NEW YORK, }
City and County of Albany, } ss:

I, Edwin G. Day, having been appointed special examiner herein, do solemnly swear that I will faithfully and fairly discharge my duties as such special examiner and make a just and true report according to the best of my understanding.

EDWIN G. DAY.

Subscribed and sworn to before me this 8th day of May, 1882.

[L. S.] WILLIAM H. LOW,
Notary Public for Albany County, N. Y.

353 Circuit Court of the United States, Northern District of New York.

THE CLARK POMACE HOLDER COMPANY, Complainant,
ag't
WILLIAM H. FERGUSON, Defendant.

Testimony for the defendant taken before Edwin G. Day, notary public, as special examiner under the 67th rule of equity, as amended, to be used at the final hearing in above-entitled cause.

JAMES E. STONER, called as a witness for the defendant, and, being first duly sworn, did testify in answer to questions as follows:

1 Q. Please give your name, age, residence, and occupation.

A. James E. Stoner; thirty-four years old; Howe's Cave, Schoharie county; foreman for the Howe's Cave Association.

2 Q. How long have you lived at Howe's Cave?

A. About twenty years.

3 Q. Do you know George Casper, of Howe's Cave; and, if so, how long have you known him?

A. About twenty years.

4 Q. What is George Casper's business?

A. He is a sawyer, planer, and manufacturer of cider.

5 Q. How long has Mr. George Casper, of Howe's Cave, been manufacturing cider, to your knowledge?

A. I think since 1873.

6 Q. Were you in Mr. George Casper's cider mill in 1873; and, if so, for what purpose?

A. Yes, sir; I drew apples there.

7 Q. Were you in Mr. George Casper's cider mill at Howe's Cave in 1874; and, if so, for what purpose?

A. August and September, for the purpose of getting cider; in October I commenced working there, and in November.

354 8 Q. Please state the manner in which Mr. George Casper laid up his cheeses, in his business of cider manufacturing, in 1873 and 1874.

A. He used slats and form and cloths, or racks rather; he laid a rack down on the press; then we sat the form on; then the cloths; then we put the pomace in the cloth; we lapped the cloth over on top of the pomace; then we laid another small piece of cloth right in the centre; then we raised our form and put another rack, and so on until the cheeses were up.

9 Q. Were the racks, form, and cloths that you used and saw used by Mr. George Casper at his cider mill at Howe's Cave, N. Y., in his business of manufacturing cider, similar to model—Defendant's Exhibit 1, of December 12, 1881, marked E. W. R., Sp. Ex. and notary—now before you?

A. Yes, sir.

10 Q. Did the rack that he and you used at said cider mill in said business extend underneath and beyond the form in 1873 and 1874?

A. Yes, sir.

11 Q. Can you give a description of the size of the form itself?
A. I should think it was about three feet six, as near as I could get at it.

Cross-examination by Mr. WARD, counsel for the complainant:

12 Q. How long have you been foreman for the Howe's Cave Association?
A. About three years.
13 Q. Who is this association composed of?
A. Joseph H. Ramsey is the head man, and his son Charles is is manager.
14 Q. Is Eli Rose connected with that association?
A. No, sir.
15 Q. When did you first commence your duties as foreman?
A. I think it was March, 1880.
16 Q. Are you positive about that?
A. I ain't quite positive; it may have been a little before that.
17 Q. Was that your first connection with that association?
A. No, sir.
355 18 Q. When were you first employed by that association?
A. More than I can answer; more than fifteen years ago.
19 Q. Did you work for him continuously since then?
A. I worked for him at different times since then; not continuously; five or six months at a time.
20 Q. How long have you been employed by them continually—that is, a permanent business?
A. Some where about three years; I cannot tell just the time.
21 Q. Previous to this time, in what capacity were you employed?
A. Overseeing the mason work, stone-cutters, and quarries; worked in the quarries.
22 Q. This is your first employment as foreman?
A. No, sir.
23 Q. When were you first employed as foreman?
A. In 1875.
24 Q. In what month of 1875?
A. First of March.
25 Q. What was your business in 1873 and 1874?
A. I worked at mason work part of the season.
26 Q. At days' work?
A. Yes, sir.
27 Q. Whose apples did you take to the mill in 1873?
A. Levi Bice's, East Cobleskill.
28 Q. What month of the year was that?
A. I think that was in the first part of October.
29 [Q.] Were you in the mill in November, 1873?
A. I don't think I was.
30 Q. Or at all after October, 1873?
A. I don't think I was; not to my recollection.
31 Q. Were you in the mill in 1872?
A. I don't think I was.

32 Q. How many cheeses did you see them lay up in 1873, at Casper's mill?

A. I didn't see them lay up more than one; am not sure that I saw them lay up any, but I might.

33 Q. When were you next in Casper's mill?

A. About the first of April, 1874.

356 34 Q. Were they making cider then?

A. No, sir.

35 Q. When did you first see them lay up cheeses in Casper's cider mill?

A. In August, 1874.

36 Q. How many cheeses did you see them lay up at that time?

A. I couldn't say just the number.

37 Q. How long were you in the mill at that time?

A. I happened in there every night or every day.

38 Q. You didn't work for him before October, 1874?

A. No.

39 Q. You went in the mill at different times to get a drink of cider?

A. Yes.

40 Q. How do you know you went in the mill in the month of August.

A. I know they always commenced just before hop picking.

41 Q. And you judge it was August of that year, because it was August of other years?

A. I know it was.

42 Q. Have you a distinct recollection of the month of August, 1874?

A. I can't place myself just now.

43 Q. Did you pick hops any that year?

A. No.

44 Q. How many cheeses did you see laid up before the 11th of September, 1874?

A. I could not say, for I never counted them.

45 Q. How many should you judge?

A. I couldn't say.

46 Q. Do you think as many as fifty?

A. Yes.

47 Q. Were the corner posts used on Casper's cider press to guide the frame and pulleys to raise the form up with used in August and the early part of September, 1874?

A. Yes, sir.

48 Q. When did you first see such an arrangement on Casper's press?

A. Early in the spring of 1874.

49 Q. Did the rack then used come up against the inside of the posts, similar to the Casper model now before you?

A. Yes, sir.

50 Q. The form then used came even with the outside sides of the rack, and is shown in the Casper model?

A. Yes, sir.

357 51 Q. The rack extended underneath the form at the two ends only?

A. Yes, sir.

52 Q. In pressing the cheese would the layer of the cheese at the two sides so press out as to meet, so that the cloths, overlapping the different layers, would touch at the sides?

A. Once in awhile would be one, but not very often—according to how the cloth laid.

53 Q. You think, as a rule, the sides did not squeeze out beyond the edges of the racks on the sides?

A. They didn't squeeze out so as to hide the racks.

54 Q. Did they beyond the even edge of the rack?

A. I think about half an inch or so.

55 Q. Who was to work at the mill in 1874?

A. I think Daniel Stevens, for one; George Casper, Frank Casper, and myself; that's all I can think of just now.

56 Q. Did Stevens work there in November, 1874?

A. I don't recollect as to that.

57 Q. Do you recollect of Stevens going to Catskill to get work and remaining away about four or five days or a week and coming back and going to work again for Casper?

A. I remember his going to Catskill and staying a few days.

58 Q. In 1874?

A. Well, I can't say in 1874 or 1873; I remember his going; I think it was some of the other boys that were there.

59 Q. Did he leave while working with you making cider and then come back again?

A. I think he did.

60 Q. Is that as positive as you can be?

A. That is as positive as I can be.

61 Q. You think it was 1874?

A. Yes.

J. E. STONER.

Subscribed and sworn to before me this 8th day of May, 1882.

[L. S.] EDWIN G. DAY,

Special Examiner and Notary Public in and for Albany County, N. Y.

358 JOHN S. CARY, called as a witness for the defendant, and, being first duly sworn, did testify, in answer to questions, as follows:

1 Q. Please give your name, age, residence, and occupation.

A. John S. Cary; near Howe's Cave, place formerly called Bramanville, town of Cobleskill, Schoharie county; fifty-four years; mechanical engineer, practical miller.

2 Q. How long have you lived at that place?

A. Have lived there about twenty-eight years.

3 Q. Do you know George Casper, of Howe's Cave?

A. Yes, sir; I know him; I have known him for about forty years.

4 Q. What is George Casper's business?

A. He runs a saw-mill, manufactures cider from apples; also runs a planer and matcher for planing and matching lumber and surfacing.

5 Q. How long has George Casper been manufacturing cider, to your knowledge?

A. Ten years this coming fall.

6 Q. What year did he first commence to manufacture cider in?

A. Eighteen hundred and seventy-two.

7 Q. Were you in George Casper's cider mill in 1872; if so, what for?

A. Yes, sir; for various purposes.

8 Q. Did you have dealings with him in 1872?

A. Yes, sir; I bought cider of him in 1872, on the 4th day of November and on the 8th day of November, 1872.

9 Q. Did you notice the method by which he manufactured cider in 1872? If so, state it—the method of laying up cheese?

A. I did notice the method; I felt somewhat interested in his business, on the account of its being something new for this section of the country, and I watched his management quite close; he first began to lay up his press or cheese in the old manner with
359 straw to hold the pomace from running out; that seemed to be too tedious and too expensive; he then used canvas instead of straw; he found a difficulty in the canvas, it would fill up with fine pomace; the cider didn't discharge as free as desired; the canvas would sometimes burst out; he then laid slats across between each cheese or ring or layer, as it might be termed; that let the cider discharge more freely; after he found that the cider discharged more freely, he went on and perfected these slats, or made them more suitable for the work, by making a series of slats, all lying in one direction and then pieces across fastening them together by shingle nails, and these pieces or slats were long enough to support the former; that formed each layer of the cheese; he then found another difficulty in laying up the different cheeses; they would fail to get them exactly over each other; the cheese would press out, bulge sometimes one way and another; to remedy it he put four upright sticks—they were movable sticks—he could take them out after he had the cheese laid up; and this former slid up and down between these four sticks; they acted as guides to the former to slide it up and down.

10 Q. Were racks, forms, and cloths that you saw used by George Casper at his cider mill at Howe's Cave, N. Y., in his business of manufacturing cider, similar to Casper model—Defendant's Exhibit 1, of December 12, 1881, marked E. W. R., Sp. Ex. and notary—now before you?

A. Only in part in 1872.

11 Q. Did you see the cider mill, in 1873, working?

A. Yes, sir.

12 Q. How was it then as regards this Casper model now before you?

A. To the best of my recollection, this is a complete arrangement as to its form, but as to the date, there is no question about it.

13 Q. Can you give the dimensions of the form he used in 1872 and 1873?

360 A. Cannot in feet and inches, only to the best of my ability in guessing sizes.

14 Q. Were you in the mill in 1873 and 1874?

A. Yes, sir; have had cider there; every year bought or made.

15 Q. What method was he then using in the manufacture of cider?

A. The same as the model before me, as far as relates to the laying up of the cheeses and pressing.

Cross-examination by Mr. WARD, counsel for the complainant:

16 Q. When did Mr. Casper first use an apparatus in making cider similar to the Casper model before you?

A. In part in 1872 and in whole in 1873.

17 Q. What part in 1872?

[A.] The slats, former, and canvas.

18 Q. By slats do you mean a rack or loose slats?

A. I mean loose slats, and the last run of his cider making I think, to the best of my knowledge, he put on two slats crosswise of the loose slats to hold them together for convenience in handling.

19 Q. Do you mean the others were nailed to these two cross-slats?

A. Yes, sir.

20 Q. That was in 1872?

A. Yes, sir.

21 Q. When, in 1873, was the device Casper used similar to this Casper model?

A. It was through all of his cider-making season.

22 Q. How often were you in his mill in 1872?

A. Probably 100 times or more; possibly 200 times; two or three times a day some days.

23 Q. How often were you there in 1873?

A. Probably not as often as I was in 1872.

24 Q. How often do you think?

A. Probably from 50 to 100 times; perhaps more—that is, during the whole year.

25 Q. When were these posts first put up?

A. In 1873, to the best of my recollection.

361 26 Q. What part of 1873?

A. I should think about the middle of the season or before.

27 Q. Were they there in November?

A. I think they were there before November; probably by the middle of October; I couldn't say as to the date or time.

28 Q. Will you swear that they were not built in November for the first time?

A. I wouldn't swear positive.

29 Q. Are you positive that they were built before the 20th of November, 1873?

A. I am not positive, but thought they were built in October.

30 Q. When is the first time that you will swear positively that you saw stiff racks or slats nailed together similar to "B" of the Casper model used in Casper's cider mill?

A. I saw it during the cider-making season of 1873, shortly after the season of cider making commenced; couldn't say as to the number of slats or cross-slats, but similar to this model.

31 Q. You are not certain as to whether you saw that used in 1872 or not?

A. I am certain I did not see it as complete as it is here.

32 Q. Did you see any racks used in 1872?

A. I saw slats used, and they answer the same purpose.

33 Q. Did you see any racks used in 1872?

(Objected to by counsel for the defendant on the ground that the question has already been answered.)

A. I wouldn't be positive that I did, but think I did. Wide and thick slats, two cross-pieces nailed onto them to hold them together.

34 Q. Are you certain that racks were used as early as September, 1874?

A. Yes, sir; I am positive that this rack and whole arrangement was used in September, 1873.

35 Q. Are you certain racks were used by Casper as early as September, 1873?

A. I am very certain that they were used as early as that, as I see it here, or very near so.

362 36 Q. Were you in his mill in 1874?

A. Yes, sir.

37 Q. Often?

A. Yes.

38 Q. And did you see them make cider?

A. Yes.

39 Q. Did you see pulleys used on the press to raise the form?

(Objected to by counsel for defendant as immaterial.)

A. I do not recollect whether there were pulleys or not on the former.

40 Q. You never saw any pulleys used?

(Same objection.)

A. I don't recollect of seeing any.

41 Q. Who did you see at work for Mr. Casper making cider, in 1873?

A. I saw Mr. Casper there.

42 Q. Any one else?

A. I think there was a man there by the name of James Hadsel.

43 Q. Any one else?

[A.] I couldn't say as to what year it was that I saw Mr. Stevens, and Mr. Stoner worked there, although I think Mr. Stevens worked there in 1873; I will not be positive.

44 Q. Did the racks used in 1873 extend beyond the bottom girts of the frame?

A. The rack extended far enough to hold up the former.

45 Q. Did the racks extend beyond the edges of the different layers of the cheese, when being pressed?

A. I think they did; after the cheese was pressed they would swell out, mostly in the centre of each layer; still the racks could be seen, but by dropping a perpendicular line they might, perhaps, come very near the edges of the rack, but yet the rack projected out clear from the canvas, to give free discharge to the cider.

46 Q. How deep was the former used by Mr. Casper [in] 1872, '73 and '74?

A. The former used in laying up the press; never took no measurement of it, but think it was about the width of legal cap paper, or somewhere about eight inches.

363 47 Q. Please measure a sheet of legal cap paper and state how wide it is.

(Objected to by counsel for the defendant as incompetent and immaterial.)

A. If this rule is correct, it is eight inches and one-twentieth of an inch wide.

48 Q. How thick were the boards of which this former was made?

(Objected to by counsel for the defendant as immaterial.)

About an inch.

49 Q. How far do you live from Casper's mill?

A. At present I live about 400 yards, but when the cider mill was first put up I lived within about fifty yards or less or more.

50 Q. This description that you have given of the method in which Mr. Casper made cider was not used in 1872, was it?

A. The complete description and press; a portion of it was used in 1872—the rack, as it relates to the slats—but the press or arrangements for making the press or cheese were completed in 1873, to the best of my memory.

51 Q. State exactly what was used by Mr. Casper in laying up cheeses in 1872.

A. He used straw when he first commenced to hold the pomace after the former was raised up; then he used canvas afterwards, and then he put on slats between each layer.

52 Q. You are positive that was in 1872?

A. Yes, sir.

Redirect examination by Mr. KING, counsel for defendant:

53 Q. Have you testified to having been in Mr. Casper's mill in 1872 from recollection or from any memorandum that you might have?

(Objected to by counsel for the complainant as incompe-
364 tent, immaterial, inadmissible; that a party cannot bolster up their own witnesses' testimony by extraneous evidence.)

A. I have testified as per diary I have been in the habit of keeping for years.

54 Q. Please state what memorandum you have in your diary by which you refresh your memory.

A. In getting thirty-nine gallons of cider of him on the 4th day of November, 1872; also getting more on the 8th day of November, 1872; also of paying him for the cider on the 8th day of November, 1872.

Recross-examination by Mr. WARD, counsel for complainant:

55 Q. Have you stated all the memoranda there is in your diary by which you refresh your memory in your testimony to-day?

A. All that I noticed in the diary of 1872.

56 Q. Is there anything in your diary concerning the racks or cloths or frames used by Mr. Casper in making cider in 1872?

A. Not that I have seen; don't think there is.

JOHN S. CARY.

Subscribed and sworn to before me this 8th day of May, 1882.

[L. S.] EDWARD G. DAY,
Special Examiner and Notary Public in and for Albany County, N. Y.

ANDREW F. VAN VORST, called as a witness for the defendant, and, being first duly sworn, did testify, in answer to questions, as follows:

1 Q. Please state name, age, residence, and occupation.

Andrew F. Van Vorst; thirty-eight years; Burnt Hill, Saratoga county; farmer and speculator.

2 Q. Do you know George C. Valentine?

A. I do.

365 3 Q. How long have you known him?

A. I have known him all his life.

4 Q. Have you lived near his and his father's place; if so, for how long?

A. I have lived near it all my life.

5 Q. What is George C. Valentine's business?

A. He is a farmer and cider maker.

6 Q. Where at?

A. Charlton.

7 Q. How near is his cider mill to your residence?

A. It is about two miles.

8 Q. How long has George C. Valentine been in the cider business, to your knowledge?

(Counsel for complainant objects to any testimony by this witness as to what George C. Valentine used, on the grounds that the witness' name and place of residence, and the place of the use of the device of which he has knowledge is not set up in defendant's answer or the amendment thereto, or any notice stating such facts has been served on the complainants.)

A. Since 1865.

9 Q. How often have you been in George C. Valentine's cider mill?

A. Quite often.

10 Q. Between the years 1867 and 1873, where did you live?

A. I joined farms with him.

11 Q. How near were you then to Mr. Valentine's cider mill?

A. I should think less than a quarter of a mile.

12 Q. Were you frequently in the cider mill of George C. Valentine between the years 1867 and 1873; and, if so, for what?

A. I was; I couldn't tell what I went for; I might went in on business, or I might have went in there to get cider.

13 Q. Have you seen him lay up cheeses in his cider mill between the years 1869 and 1873?

A. I have seen him laying up cheeses; yes, between those dates.

366 14 Q. What appliances did he use in laying up cheeses that you saw in any of the years between 1867 to 1873?

(Objected to by counsel for the complainant on the ground that witness' name, place of residence, and place of knowledge of use had not been stated in defendant's answer or the amendment thereto, or in any other way furnished to complainant or its solicitor.)

A. I have seen him use the racks, form, and cloth.

15 Q. In what year did you see him use the rack, form, and cloth?

A. I could not state the exact year.

16 Q. Can you state whether it was prior to the cider-making season of 1873?

A. I can.

17 Q. Was it prior to the cider-making season of 1873?

A. It was.

18 Q. What kind of racks was Mr. Valentine using at that time?

A. It was made of slats.

19 Q. How were they fastened together?

A. They were crossed, one nailed to the other.

20 Q. What sort of form was Mr. Valentine using at that time?

A. He had a frame standing up, nailed together at the corners.

21 Q. Can you give the dimensions of the form?

A. I should think the strips were between four and five inches in width; they are the side pieces; and, as to the length, I don't know as I could say; perhaps four feet and a half; the breadth would be somewhere in that neighborhood—it might be a trifle less—and the length may have been five feet.

22 Q. Give the dimensions of the rack, with respect to the form, which Mr. Valentine was using at that time.

A. The rack was larger than the form; the form sitting upon the rack, the rack would project out beyond the form.

23 Q. What sort of cloths was Mr. Valentine using at that time?

A. I should say it was a coarse linen cloth; don't know the name of it.

367 24 Q. How do the form, racks, and cloths used by Mr. Valentine at that time in the manufacture of cider compare with those of the Casper model now before you in similarity?

A. The rack was very similar, except the cross-pieces; they were close together. The form I can't see no great difference; it might be broader, but yet, for all, I should say it was very similar. The cloth, I should say, was the same kind.

25 Q. Did Mr. George C. Valentine, in the cider-making season of 1873 and 1874, in the manufacture of cider, use the same appliances as those which you have just described?

A. I think he did.

Cross-examination waived.

A. T. VAN VORST.

Subscribed and sworn to before me this 8th day of May, 1882.

[L. S.] EDWIN G. DAY,
Special Examiner and Notary Public in and for Albany County, N. Y.

EDWARD MERCHANT, called as a witness for the defendant, and, being first duly sworn, did testify, in answer to questions, as follows:

1 Q. Please state your name, age, residence, and occupation.

A. Edward Merchant; fifty-nine; Charlton, Saratoga county, N. Y.; farmer.

2 Q. How long did you live at Charlton?

A. About eleven years. I moved away in the spring of 1880, and — now back.

3 Q. Do you know George C. Valentine?

A. Yes, sir.

4 Q. Where does he live, and how near to you?

A. He lives in the town of Charlton, and it is about a mile from where I live.

5 Q. What is his business?

A. Cider making and farming.

368 6 Q. How long has he been making cider, to your knowledge?

A. From 1869; that is the time I moved there; he was making cider that fall.

7 Q. Were you in his cider mill in 1869?

A. Yes, sir.

8 Q. And have you been in his cider mill every year since then?

A. Well, I have, unless it was in the fall of 1880; I think the fall of 1880 I was not in the mill.

9 Q. Did you ever see him lay up cheeses?

A. Yes; occasionally.

10 Q. Did you see him lay up cheeses in 1869?

A. Yes.

11 Q. How did he lay cheeses in his cider mill in 1869?

A. I think that he laid some of his cheeses in straw, but whether he used racks I am not positive.

12 Q. Did you at any time see him use the racks, forms, and cloths?

A. Yes; I have seen him.

13 Q. In what year did you first see him use them?

A. According to my recollection, it was 1871 or 1872.

14 Q. Are you sure it was one of those two years?

A. Yes, sir.

15 Q. Describe the form which Mr. Valentine used in 1871 and 1872, and also the racks and cloths?

A. He had; I think the sides was about four inches deep; I don't think it was square exactly, and it set right on the racks; the racks projected over.

16 Q. What sort of cloths did he use?

A. I think it was burlaps.

17 Q. How was the rack constructed?

A. There was slats nailed crosswise to one another, about the thickness of a lath, about one-quarter to three-eighths of an inch apart.

18 Q. Did the racks extend under and project beyond the form?

A. It did.

19 Q. How many presses did Mr. Valentine have in 1871 and 1872?

A. Two.

369 20 Q. And upon how many of them did he use the form, racks, and cloths in the manufacture of cider in 1871 and 1872?

A. He used them on one, and I don't know whether he used them on both. I have seen them on both. Whether he had enough racks to go on both presses I don't know.

21 Q. Were the form, racks, and cloths which were used by Mr. Valentine in 1871 and 1872 in the manufacture of cider similar to those exhibited in the Casper model now before you?

A. I should think they were.

The further hearing in this cause is adjourned until Tuesday morning, May 9, 1882, at 10.30 a. m.

[L. S.] EDWIN G. DAY,
Special Examiner and Notary Public
in and for Albany County, N. Y.

Circuit Court of the United States, Northern District of New York.
In Equity.

THE CLARK POMACE HOLDER COMPANY, Complainant,
ag't
WILLIAM H. FERGUSON, Defendant.

Examination of witnesses for the defendant, taken before Edwin G. Day, special examiner and notary public, pursuant to adjournment, on the 9th day of May, 1882, at 10.30 a. m.

Continuation of the testimony of EDWARD MERCHANT, a witness for the defendant:

22 Q. Please describe the manner in which George C. Valentine laid up his cheeses in the years 1869 and 1870.

A. I could not really describe that, but it is my impression that he used some straw in 1869.

370 23 Q. Describe the manner in which he laid up his cheeses in the years 1871 and 1872.

A. He had a form; he had racks and cloths.

24 Q. Describe the manner in which he used them in laying up his cheese.

A. I don't know as I have seen him begin at the bottom to lay the cheese; but I have seen him in the process or construction of laying it up after it was started.

25 Q. Give the process of construction in laying up his cheeses in the year 1871 and 1872.

A. He used this form and rack and cloth; he threw the pomace on the cloth and then wrapped the ends over, and then lay on another rack on the top; that is the way I think he used; he would have to raise up the form every time.

26 Q. What was the first thing he did in laying up his cheese?

A. I don't remember; I don't know whether I happened in the mill before or after he commenced in laying up the cheese.

27 Q. Did you notice the manner in which he had constructed any cheese?

(Objected to by counsel for complainant that the witness has not been shown to be competent to testify of it from an examination of the cheese as to the method by which it was formed.)

A. I can only make the same statement as I made before of his using these cloths, racks, etc.

Cross-examination by Mr. WARD, of counsel for complainant:

28 Q. Are you able to state any more definitely than you have already stated the manner in which Mr. Valentine laid up cheeses in his cider mill in 1872?

A. Well, I couldn't go on and give a minute description of his manner; I saw him using the racks, cloth, and form.

29 Q. But you cannot state just the manner in which they were used?

371 A. I saw him put in his pomace onto those cloths, and then he would rack over the cloths, according to my recollection, and then he would raise up his form and go on.

30 Q. When was your attention first called to the date when you first saw racks, cloths, and forms used in George C. Valentine's mill?

A. I think it was in 1871 or '72; I think it was used in 1871 or '72.

31 Q. When, within the last year, did you first attempt to recall the date when you first saw cloths used in George C. Valentine's mill?

(Objected to by counsel for the defendant as immaterial and irrelevant.)

A. Two or three weeks ago.

32 Q. You hadn't ever thought of it as an important event, worthy to be remembered, until within a few weeks ago, had you?

(Same objection.)

A. I don't know; I can't tell what I thought about it; it hadn't interested me; George spoke about it; I had no interest in it.

33 Q. Who first asked you to fix a date when you saw cloths used in George C. Valentine's mill?

(Same objection.)

A. I talked with no one but George.

34 Q. When was your conversation with George C. Valentine in regard to this matter?

(Same objection.)

A. He spoke about it to me on or about two years ago; I can't tell; it is my impression it was about two years ago.

35 Q. You say you moved in Charlton in 1869?

A. Yes.

36 Q. And you took apples to his mill in that year?

A. If we took them anywhere we took them there; we had apples.

37 Q. You owned the farm?

(Objected to by counsel for the defendant as immaterial.)

372 A. No, sir.

38 Q. You say you had apples?

A. I think we did; we had an orchard on the farm.

39 Q. And you had apples, more or less, every year up to 1880?

A. I think we did.

40 Q. George C. Valentine's mill was the place you took your apples for cider and got your cider?

A. We got what cider we needed and he payed us for apples we had over.

41 Q. Were you at George C. Valentine's mill, more or less, during the years 1876, 1877, 1878, and 1879?

A. I used to be there occasionally.

42 Q. And at those times did you see racks, cloths, and forms in use at George C. Valentine's mill?

A. I think I did, whenever I have been there; I have seen them around there.

43 Q. Can you describe how these racks, cloths, and forms were used during those years any more definitely or with any more particularity than you have already described their use in 1871 and 1872?

A. I could take that mill, forms, cloths, pomace, and put up a cheese when I had the mill before me.

44 Q. But from your memory could you give a more definite description than you have already given?

A. I don't know as I could.

45 Q. For how many years after you removed to Charlton in 1869 did Mr. George C. Valentine use straw in making cider?

A. I don't know whether he used any after he used the racks. He had two presses.

46 Q. Will you be positive he didn't use straw in his cider mill in making cider for five years, including 1869, after you moved to Charlton?

(Objected to by counsel for defendant on the ground that the witness has already answered that he can't tell.)

A. I don't know; I wasn't there every day. How could I tell whether they used straw.

373 47 Q. You know that he did use straw some before he used racks at all, do you not?

A. [In] eighteen hundred and sixty-nine he used some.

48 Q. Are you positive that he used cloths in 1870?

A. I wouldn't swear positive; but it is my impression he did.

49 Q. You were on friendly terms with George C. Valentine at that time and are still?

(Objected to by counsel for defendant as immaterial.)

A. Yes; same as with other neighbors in the neighborhood—more or less.

50 Q. All you know about what George C. Valentine used and when he used it is simply this, is it not, that you moved to Charlton in 1869; that he then used straw upon his press; that he soon afterward used racks, cloth, and form, and that you think this change took place as early as 1871 or 1872?

A. I said he used some straw in 1869; I don't know but what he was tinkering at this thing then, but I think I remember he was using the racks, form, and cloths in 1871 or 1872; as early as that.

EDWARD MERCHANT.

Subscribed and sworn to before me this 9th day of May, 1882.

[L. S.] EDWIN G. DAY,
Special Examiner and Notary Public in and for Albany County, N. Y.

The further examination of witnesses in the above-entitled case adjourned until Thursday, the 18th day of May, 1882, at 10.30 a. m.

[L. S.] EDWIN G. DAY,
Special Examiner and Notary Public in and for Albany County, N. Y.

374 Circuit Court of the United States, Northern District of New York. In Equity.

THE CLARK POMACE HOLDER COMPANY
ag't
WILLIAM H. FERGUSON.

Examination of witnesses for the defendant taken before Edwin G. Day, special examiner and notary public, pursuant to adjournment.

On the 29th day of May, 1882, the parties appeared, and EDWARD G. DOW, called as a witness for defendant and being first duly sworn, did testify in answer to questions as follows:

1 Q. Please state your name, age, residence, and occupation.

A. Edward Greer Dow; forty-five years in August; Sherburne, Chenango county, N. Y.; farmer, saw-mill and planing-mill, and cider maker.

2 Q. How long have you lived at Sherburne?

A. Forty-five years in August; part of this time I have been absent.

3 Q. How long have you manufactured cider?

A. Eleven seasons.

4 Q. Do you fully understand the business of manufacturing cider?

A. I think I do.

5 Q. In your business of manufacturing cider and the appliances which you have used, what appliances have you used?

A. I have used screw presses with straw and curb—the first season.

6 Q. What do you mean by curb?

A. That was slats in a round form like a barrel; slats were fastened to an iron hoop with a rivet.

7 Q. What did you use next season?

A. Screw presses with cloths, racks, or scale-boards, as we call them, and curb, now known as form, but we got in the habit of calling it curb.

8 Q. What season was it you commenced to use the cloths, racks, and form in the manufacture of cider?

A. In 1871.

375 9 Q. What kind of cloths did you use in the cider-making season of 1871?

A. I used hop sacking.

10 Q. Please state what you used in 1870.

A. Toward the last of the season of 1870 we used burlaps inside of the curb with racks.

11 Q. Describe the racks which you used in 1870 in the manufacture of cider.

A. They were made of slats crossing each other at right angles, and cut small enough to slip easily in the curb.

12 Q. Describe your manner of laying up a cheese in the season of 1871, in the manufacture of cider.

A. We set the curb upon the platform, then we put some straw in,

taking care to have it reach up around the sides well, then put in what we considered a proper amount of pomace in the curb, and folding the straw over the pomace; then putting new straw in and pomace as before, folding the straw again, repeating the process till the curb was full; then we put on the follower with blocking; then we turned the screw as turned by hand, being hung on the beam over the cheese: the screw was turned until the cider was forced out of the pomace.

13 Q. Describe the apparatus which you used in the manufacture of cider in the season of 1871.

A. We used two double-screw presses in laying up the cheese; we placed the form on the platform, which was held in proper position by logs resting against the bolts of the presses; then we placed our cloths over the form and shoveled pomace enough to fill the form nearly full; then we folded the cloths over the top of the pomace; we took off the form, put on a scale-board or rack, then replaced the form and more cloths and pomace as before, until we had a cheese of proper height, if there were apples enough to make it; then the follower and a cross-head we used; then that connected the two screws, and was guided by the bolts of the presses.

376 14 Q. Describe the form which you were then using in 1871.

A. It was nearly square, being five inches deep, the corner being secured by means of nails in a corner piece, with logs at each end in the cuts to rest against the bolts for guide.

15 Q. Describe the racks which you used in your business of cider making in 1871.

A. They were made of boards planed smooth and held close together by battens nailed crosswise, and were about four inches longer than the form.

16 Q. Did the rack extend beyond and underneath the form?

(Objected to by Mr. Ward, counsel for complainant, as leading.)

A. It did.

17 Q. How long have you used the racks just described?

A. Ten years.

18 Q. Have you made any change in the form, racks, and cloth which you were using in the season of 1871 since that time?

A. We cut the cloths a little larger and made the scale-boards some smaller for convenience; the first ones were larger than needed; when we made new scale-boards, as we have to, the old ones were cut about three inches larger than the form.

19 Q. With that exception, are the forms, racks, and cloths you are now using similar to those you were using in 1871?

A. They are essentially the same.

20 Q. Have you been called upon by the Clark Pomace Holder Company, the complainant in this case, to pay for an alleged infringement of the letters patent upon which this suit was brought?

A. I have.

21 Q. When?

A. I think it was in December, 1878.

22 Q. Who called to see you about such payment for such alleged infringement?

A. Mr. John Clark.

377 23. Q. What was said by Mr. Clark at this time in relation to such alleged infringement?

A. He said he had the patent on the process we were using.

24 Q. Did he at that time examine your press and appliances for making cider?

A. He did.

25 Q. Did he see the cloth, racks, and forms used by you in your business of cider making at that time?

A. Yes, sir.

26 Q. Did he claim that the racks which you were then using was an infringement of his letters patent?

A. He did.

27 Did you, or did you not, state to him that you had invented the device of using racks, forms, and cloths in making cider?

(Objected to by counsel for complainant as leading. Witness should be allowed to give the whole conversation.)

A. I did.

28 Q. Did you, or did you not, state to him at that time that you had used the device of forms, racks, and cloths in making cider since 1871?

(Objected to by counsel for complainant as irrelevant, immaterial, and leading.)

A. I did.

29 Q. Was the idea of using forms, racks, and cloths in combination in the manufacture of cider, original with you?

(Same objection.)

A. It was.

The further examination of witnesses in the above-entitled cause adjourned until Tuesday morning at 9 o'clock in the forenoon.

[L. S.] EDWIN G. DAY,
Special Examiner and Notary Public in and for Albany County, N. Y.

378 Circuit Court of the United States, Northern District of New York. In Equity.

THE CLARK POMACE HOLDER COMPANY, Complainant,
ag't
WILLIAM H. FERGUSON, Defendant.

Examination of witnesses for the defendant taken before Edwin G. Day, special examiner and notary public, pursuant to adjournment, on the 30th day of May, 1882, at 9 a m.

Continuation of the testimony of EDWARD G. DOW, a witness for the defendant.

Cross-examination by Mr. WARD, of counsel for complainant:

30. Q. What year was this that John Clark was at your place?

A. I think 1878, of December; I don't like to say positive; there is nothing that fixes it definitely.

31 Q. Is that the first — that any agent or any person claiming to represent the Clark Pomace Holder Company or the patentee of this patent had any conversation with you, or examined your mill and system of making cider, to your knowledge, is it not?

A. It was.

32 Q. When did you first put in your two double-screw presses?

A. In the fall of 1871.

33 Q. You are positive about that?

A. Yes, sir.

34 Q. How long did you use these screws before you used the cloths, forms, and scale-boards?

A. No time before.

35 Q. Of whom did you get the screws?

(Objected to by counsel for the defendant as immaterial.

A. Mr. Mount, of Medina, N. Y.

36 Q. Is he the manufacturer of what is known as the Medina press?

379 (Objected to by counsel for defendant as immaterial, and as not being confined to the direct examination.

A. He was later.

37 Q. Is he now living?

(Same objection.)

A. He is not.

38 Q. Who made your scale-boards in 1871?

A. I, with the help of my hired man.

39 Q. Who was your hired man?

A. C. L. Holmes.

40 Q. Where does he now reside?

A. In Sherburne.

41 Q. What is his occupation?

A. Carpenter.

42 Q. Who worked for you in 1872, 1873, and 1874?

(Objected to by counsel for defendant as immaterial.)

A. I can't explain the names of all of them, or give the dates, without referring to an account book.

43 Q. Can you give any of their names now?

(Same objection.)

A. Yes, sir.

44 Q. Give them.

A. C. L. Holmes, H. E. Raymond, Wallace Allen, Orville Spicer, Hiram Spicer, C. W. Dow.

45 Q. These men all live in and about Sherburne at the present time?

(Same objection as above.)

A. They do not.

46 Q. State what ones do live about Sherburne now?

(Same objection.)

A. Wallace Allen, C. L. Holmes, C. W. Dow, H. E. Raymond.

47 Q. Where do the others live now?

(Same objection.)

380 A. Orville Spicer lives in Utica and works in a cotton factory; Hiram Spicer lives in Columbus, Chenango county, is a farmer, and post-office address is South Edmiston; James Gilles also worked for me in 1874; he worked the season; he is now living in Sherburne.

48 Q. Who made your form in 1871?

A. I did.

49 Q. Have you used that form every year since it was made?

A. Yes, sir.

50 Q. And it is the form now in general use in your mill?

A. It is.

51 Q. These scale-boards which you have spoken about were made tight so that cider could not press through from one layer of the cheese to the other, were they not?

A. Yes, sir.

52 Q. Did the top sides of the scale-boards become slippery after use?

A. Yes, sir.

53 Q. Did you ever make cider late in the fall, after it is cold weather?

A. Yes, sir.

54 Q. Were you ever troubled with the cheeses slipping and getting out of plumb?

(Objected to by counsel for defendant upon the ground that it is not confined to the direct examination, and is immaterial and irrelevant.)

A. Yes, sir.

55 Q. Was this trouble ever due to the scale-boards getting smooth?

(Same objection.)

A. It was not.

56 Q. By what name, in your practical use, did this scale-board or rack go by?

A. Scale-board.

57 Q. When was the first — that it was ever called a rack, to your knowledge?

A. I can't give the dates; I saw the term used in Boomer and Boschert Press Company's circular.

58 Q. The device described in that circular is similar to the rack in Plaintiff's Exhibit No. 9, now shown you?

381 (Objected to by counsel for defendant to any evidence being given by the witness as to the contents of the circular—that the circular should speak for itself.)

A. It was.

59 [Q.] Is the circular you mentioned similar to the Boomer and Boschert circular of 1881, now shown you?

A. It was similar, with the exception of the improvements.

60. Was the rack described in that circular similar to the rack described in the circular of 1881?

(Objected to by counsel for defendant to any evidence being given from the circular now shown witness upon the ground that they have not shown this circular to be a true copy of the one which the witness received from Boomer and Boschert Company.)

A. It was.

61. Did you from that time call your scale-boards by the name of racks?

(Objected to by counsel for defendant as immaterial.)

A. No, sir.

62 Q. When was it that you received the circular that you have spoken of?

A. I think it was 1877.

63 Q. Is that as positive as you can be?

A. I don't like to be positive about the date.

64 Q. The top sides of your scale-boards were planed smooth, were they not?

A. Yes, sir.

65 Q. And the only difference between the scale-boards as used in 1871 and those of 1882 is that those in present use are about an inch smaller on each side?

(Objected to by counsel for defendant upon the ground that the witness has not testified to the use of any scale-boards in 1882.)

A. That is the only difference.

66 Q. How long had you made cider before you commenced to use the form cloths, and scale-boards?

A. One season.

382 67 Q. Who used this old press before you?

(Objected to by counsel for defendant as immaterial.)

A. My father.

68 Q. Had you worked at the business of making cider before you took control of it on your own account?

A. No, sir.

69 Q. About how many rings or layers do you make, in laying up cheese with your present process?

A. From one to three, according to the amount of apples.

70 Q. Never more than ten?

A. Seldom; occasionally one or two more, so as to take the main load of apples in the cheese.

71 Q. Isn't seven or eight the ordinary rule?

A. Yes, sir.

72 Q. Have you any written memorandum or any book which fixes the dates when you commenced to make cider?

A. I have only my account books.

73 Q. What do your account books show?

(Objected to by counsel for defendant to any evidence being given as to the contents of the account books by witness, except from the account books themselves.)

A. Show charges for making cider for various parties.

74 Q. Have you those books with you?

A. I have one containing an account of 1870 and 1871.

75 Q. Nothing in this book shows when you put in your new presses, or what system of laying up cheeses were used by you, does it?

A. Some of the charges or accounts made bring the dates first to my memory in connection with cider making.

76 Q. Is there any reference in the book as to the system used?

A. I think there is not.

(Complainant's counsel offers in evidence the Boomer and Boschert Press Circular for the year 1881, especially pages 10 and 11, showing the rack referred to in witness' examination.)

383 (Objected to by counsel for defendant as immaterial and irrelevant to the issue and incompetent, for the reason that it has not been shown that either this circular or copy thereof has at any time been received by the witness from the Boomer and Boschert Press Company (marked Complainant's Exhibit No. 1, of May 30, 1882, E. G. D., Sp. Ex. and N. P.).

E. G. DOW.

Subscribed and sworn to before me this 10th day of May, 1882.

[L. S.] EDWIN G. DAY,
Special Examiner and Notary Public
in and for Albany County, N. Y.

ELIJAH B. HOLDEN, called as a witness for the defendant, and, being first duly sworn, did testify, in answer to questions, as follows:

1 Q. Please state your name, age, residence, and occupation.

A. E. B. Holden; sixty-six years; my occupation in the fall is making cider for from two to three months, and farmer; North Clarendon, Rutland county, Vermont.

2 Q. How long have you lived at North Clarendon?

A. About forty years; most of the time since 1840.

3 Q. How long have you been in the manufacture of cider?

A. Since 1861.

4 Q. On your own account?

A. On my own account.

5 Q. Do you understand the business of cider making and the appliances used?

A. I think I do, and it is thought so by my neighbors.

6 Q. In your business of cider making, please describe the appliances which you have used.

A. I first used a circular hook or crib having a groove bottom board and boards grooved on both sides to furnish conduits for the cider to pass off freely, sometimes using straw and sometimes
384 using cloth to keep the pomace from filling these channels. Then I used a form or hook square, three and one-half feet, laid up in straw. Next I made a crib three and a half feet square, with upright staves. The girts or timbers which the staves were nailed to were locked at the corners so that they could be easily taken apart. Then I made racks—flexible frames—to just fit inside the crib, to be used in connection with cloths placed upon each side of the frames. I will state that these cloths were made so as to just cover the frames. Then I cast aside the crib and made larger frames, laying up the cheeses into forms extending beyond the form. That is all the various methods I used until 1880.

7 Q. What do you mean by a frame?

A. I mean a frame made of large strips, one-half inch thick and an inch wide, spaced three-sixteenths of an inch apart. They were spaced so as to leave three-sixteenths of an inch between the strips.

8 Q. When did you first commence to use such a frame?

A. In 1876.

9 [Q.] What frame had you used in the years '70, '71, '72, '73, and '74?

A. I did not use frames in '71, '72. I used frames made of strips three-sixteenths of an inch thick, one inch wide, placed three sixteenths of an inch apart; the same strips laid crosswise, the same space and the same distance, nailed with copper nails or tacks. These were used with cloths, as stated, on both sides—much lighter than these.

10 Q. When did you first use the press in the manufacture of cider?

A. It was in 1863.

11 Q. Describe the form that you used.

A. It was made of inch boards six inches wide nailed at the ends with stays or corner pieces to stiffen the frame, to keep it in a square position. That is all about the form.

12 Q. Did the frames, as you call them, extend beyond and underneath the form?

385 (Objected to by counsel for complainant as leading, that witness has not testified to using the form with the frames in 1863, and that the question is misleading.)

A. I did not use any frame at this time.

13 Q. At the time you did use them was such the case?

(Objected to by counsel for complainant as leading and indefinite.)

A. Frames in use in 1876 extended beyond the form some three inches or more.

14 Q. What year was it that you first commenced the use of cloths?

A. 1872.

15 Q. Will you describe your manner of laying up a cheese with the appliances of the former frames and cloths?

(Objected to by counsel for complainant as leading, and that witness has not stated that he ever used the three together.)

A. I first laid a frame upon a press bottom, placed the form upon this so as to bring it in the centre of the press, then spread a cloth over it and pressed down in to fill the form, these cloths extending some fifteen inches beyond the form; I then filled the form with pomace, evenly, brought the edge of the cloths over the pomace on each side alternately; then the cloths not covering the pomace wholly in the centre of the cheese, I placed a cloth or patch about one yard again to cover the centre; I then lifted the form, placed another rack upon this layer, placed the form top of that, again filled as before, and continued until this process was completed, some ten lifts.

16 Q. Will you please look at this book?

A. Yes.

17 Q. What is it?

A. The Cider Maker's Manual.

18 Q. Published where and when?

A. In Buffalo, N. Y.; 1869.

386 19 Q. Is it accepted as competent authority upon the manufacture of cider among cider makers?

A. It is by me and cider makers in Niagara county.

20 Q. Have you read the book?

A. I have, very carefully; some parts of it repeatedly.

(Counsel for defendant offers in evidence the Cider Maker's Manual, by J. S. Buell, published at Buffalo in 1869, marked Defendant's Exhibit No. 1, of May 30, 1882, E. G. D., Sp. Ex., notary.)

(Objected to by counsel for complainant as irrelevant, immaterial, and incompetent.)

Cross-examination suspended.

Redirect examination by counsel for defendant.

No cross-examination.

Recess for an hour.

ELIJAH HOLDEN.

Subscribed and affirmed to before me this 30th day of May, 1882.

[L. S.] EDWIN G. DAY,

Special Examiner and Notary Public in and for Albany County, N. Y.

The further examination of witnesses in the above-entitled cause adjourned until Wednesday, June 14, 1882, at 10 o'clock in the forenoon.

[L. S.] EDWIN G. DAY,
Special Examiner and Notary Public
in and for Albany County, N. Y.

Circuit Court of the United States, Northern District of New York.
In Equity.

THE CLARK POMACE HOLDER COMPANY
ag't
WILLIAM H. FERGUSON.

Examination of witnesses for the defendant taken before Edwin G. Day, special examiner and notary public, pursuant to adjournment.

387 On the 14th day of June, 1882, the parties appeared, and, at the request of counsel for defendant, the further examination of witnesses was adjourned until Thursday, June 15, 1882, at 10.30 o'clock a. m.

[L. S.] EDWIN G. DAY,
Special Examiner and Notary Public
in and for Albany County, N. Y.

Circuit Court of the United States, Northern District of New York.
In Equity.

THE CLARK POMACE HOLDER COMPANY
ag't
WILLIAM H. FERGUSON.

Examination of witnesses for the defendant taken before Edwin G. Day, special examiner and notary public, pursuant to adjournment.

On the 15th day of June, 1882, the parties appeared—the complainant by W. E. Ward, of counsel, and the defendant by G. W. Featherstonhaugh, of counsel.

Defendant's counsel offers in evidence the specification and drawings attached, forming part of letters patent No. 63951, dated April 16, 1867, and entitled United States Patent Office, John Shinn, of Leverington, Philadelphia, Penn., assignor to himself and George S. Rhodes, letters patent No. 63951, dated April 16, 1867, "improvement in press bands for an oil press" (marked Defendant's Exhibit No. 1, of June 15, 1882, E. G. D., Sp. Ex. and notary).

Complainant's counsel objects to the admission of said papers in evidence on the ground that they are irrelevant, immaterial, and not described in defendant's pleadings.

Defendant's counsel asks to be allowed to amend the defendant's answer herein so as to include therein, among others, the
388 name and place of residence of the witness, Andrew F. Van

Vorst, of Burnt Hills, Saratoga county, N. Y., and the place of the use of the device of which he has knowledge.

Complainant's counsel objects to such amendment on the grounds that if the defendant desired such an amendment he should have asked for it at the time the objection was made to the admission of the evidence given by the said Andrew F. Van Vorst; that the complainants, *were* relying upon the sufficiency of said objection, omitted to cross-examine said Van Vorst, and it is now too late to do so.

Defendant's counsel asks now for a further extension of the time for the taking of testimony herein for the purpose of examining and taking the testimony of other witnesses of the defendant named in defendant's answer and the amendment thereto; that the defendant's counsel, owing to other professioned engagements, as well as engagements of the defendant himself, has been unable to procure at the present time the witnesses he expected to examine.

Complainant's counsel objects to any further extension of time on the ground that defendants *have* been negligent in the production and examination of the witnesses named in his answer and amendments thereto; that of the thirty-three witnesses named who have not been examined four reside in the county of Albany, near the city of Albany, where all the testimony in the case thus far has been taken, and who could be produced almost any day; that sixteen more of the witnesses who have not been examined reside within the State, and the most of them in adjoining counties, and could easily be produced if properly subpœnaed; that complainants *are* informed that thus far no subpœnas has been issued by the defense, and that the defense have relied entirely on the willing-
389 ness of the witnesses to appear and be examined; that a large number of cider manufacturers throughout the country are now infringing upon plaintiff's patent, and complainant is unable to collect royalties or prohibit the use of the device covered by plaintiff's patent, upon which this suit is brought, until this case is terminated; that the cider-making season commences about the first of October, and that great damage would result to complainant if this case is allowed to occupy another year; that complainant desires to put in the rebutting testimony before fall, so that the case may be closed and complainant and cider makers in general may know whether or not it is a valid patent before the cider-making season of this year.

Defendant's counsel states that the complainant's representatives have many times during the progress of the taking of the testimony herein stated to defendant's counsel and the examiners before whom the testimony was taken that they desired the fullest investigation of the patent and the examination of as many witnesses as the defendant chose to offer, because they intended to make this case a test case.

Defendants, relying upon such statement, have endeavored to have the testimony of these witnesses taken as speedily as possible, and believing that the complainant would adhere to *their* representations and allow the further proof of the defendants to be taken and not deprive *them* of the evidence they ought to have; that the

cider maker season commences usually in August in each year, and no detriment could occur to complainant by reason of the taking of additional testimony by defendants.

Defendant's counsel asks to be allowed to amend the answer of the defendant herein so as to include and receive therein the specifications and drawings attached, introduced in evidence by him June 15, 1882, and marked Defendant's Exhibit No. 1, of June 15, 1882, E. G. D., Sp. Ex. and notary.

390 Complainant's counsel asks the defendant's counsel to state how the said exhibit is material to the issues of this case.

Defendant's counsel states that his exhibit is material to the issue in that it shows the use of cloths and racks in the year 1867.

Complainant's counsel consents to the admission of the exhibit.

The defendant's counsel now states that his request for the further extension of time for the taking of testimony herein being denied, and there being no witnesses present to be examined, and the time for the taking of testimony being terminated by stipulation, defendant is compelled to close, subject to a motion being made to the court for time to take further testimony, if deemed advisable, within the next fourteen days.

[L. S.] EDWIN G. DAY,
Special Examiner and Notary Public in and for Albany County, N. Y.

United States Circuit Court, Northern District of New York. In Equity.

THE CLARK POMACE HOLDER COMPANY
ag't
WILLIAM H. FERGUSON.

UNITED STATES OF AMERICA.

STATE OF NEW YORK, *City and County of Albany,* } *ss:*

I, Edwin G. Day, special examiner, duly appointed in the above-entitled cause under the sixty-seventh rule in equity, as amended, and notary public in and for the county of Albany and State

391 of New York, do hereby certify that I attended at my office, No. 31 North Pearl street, Albany, N. Y., at the several times in the foregoing testimony mentioned, and was there attended by W. E. Ward, Esq., of counsel for the complainant, and William H. King, Esq., of counsel for the defendant, and the oral examination of witnesses for defendant then proceeded in their presence and was taken down by me in writing and signed by the witnesses produced before me, in the presence of said counsel, which said testimony is also signed by me.

And I further certify that I am not of counsel nor attorney for either of the parties to said suit in the above caption mentioned, nor in any way interested in the result.

In testimony whereof I have hereunto set my hand and seal this

15th day of June, in the year of our Lord one thousand eight hundred and eighty-two, and of the Independence of the United States the one hundred and fifth.

EDWIN G. DAY,
Special Examiner and Notary Public.

392 *Complainant's Exhibits.*

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE.

To all persons to whom these presents shall come, Greeting:

This is to certify that the annexed is a true copy from the records of this office of the letters patent granted John Clark, February 6, 1877, No. 187,100, for improvement in cheese formers for cider presses,

In testimony whereof I, E. M. Marble, Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed this seventeenth day of August, one thousand eight hundred and eighty-one, and of the Independence of the United States one hundred and sixth.

[SEAL.] E. M. MARBLE,
Commissioner.

No. 187,100.

THE UNITED STATES OF AMERICA.

To all to whom these presents shall come:

Whereas John Clark, of Pontiac, Michigan, has presented to the Commissioner of Patents a petition praying for the grant of letters patent for an alleged new and useful improvement in cheese formers for cider presses, a description of which invention is contained in the specification, of which a copy is hereunto annexed and made a part hereof, and has complied with the various requirements of law in such cases made and provided; and

Whereas, upon due examination made, the said claimant is adjudged to be justly entitled to a patent under the law:

Now, therefore, these letters patent are to grant unto the said John Clark, his heirs or assigns, for a term of seventeen years from the sixth day of February, one thousand eight hundred and seventy-seven, the exclusive right to make, use, and vend the said invention throughout the United States and the Territories thereof.

In testimony whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed, at the city of Washington, this sixth day of February, in the year of our Lord one thousand eight hundred and seventy-seven, and of the Independence of the United States of America the one hundred and first.

[SEAL.] CHAS. T. GORHAM,
Acting Secretary of the Interior.

Countersigned:
ELLIS SPEAR,
Commissioner of Patents.

(Here follows diagram marked page 393.)

394 UNITED STATES PATENT OFFICE.

JOHN CLARK, of Pontiac, Michigan.

Improvement in Cheese Formers for Cider Presses.

Specification forming part of Letters Patent No. 187,100, dated February 6, 1877; application filed September 11, 1876.

To all whom it may concern:

Be it known that I, John Clark, of Pontiac, in the county of Oakland and State of Michigan, have invented an improvement in cheese formers for cider presses, of which the following is a specification.

The object I have in view is, in laying up a "cheese" for the cider-press where each layer is folded up in a cloth, to secure uniformity of thickness of all the layers in the mass or cheese, and thus secure uniform pressure on its entire area, and to avoid all tendency to break the pomace frames or racks. To this end it consists in the employment of a guide-frame, in combination with extended pomace racks, as more fully hereinafter set forth.

Figure 1 is a perspective view, showing the manner of laying up a cheese in a press. Fig. 2 is a cross-section at *x x*.

In the drawing, A represents the lower frame-work of a cider-press, on which is laid a bed, B. C is a pomace rack, which may be rigid, as shown, or flexible, as described in letters patent No. 148,034, issued to me March 3, 1874. On this rack is laid a guide-frame, D, whose bottom girts are not spaced far enough apart to extend the full length of the rack on which they rest. A cloth, E, large enough to envelop the layer is then laid on the rack, inside the frame, and opened out to receive the pomace, which is "struck" level with the girts of the frame, after which the cloth is folded over the leveled pomace and the frame is lifted off. The next and succeeding racks are in like manner laid on the first, and filled up, and a follower is placed an the upper one, when the cheese is ready to press. Laid up in this way, the several layers are uniform in thickness, and the cheese, in mass, is level on top and offers a uniform resistance to the pressure over its entire area, thus assuring the expression of all the juice and precluding all danger of breaking the pomace racks.

If the bed B be extended, a cheese may be built upon a board while one is being pressed, and then be slid under the follower when the first one is removed.

What I claim as my invention is—

The guide-frame D, in combination with an extended pomace-rack, and a cloth to inclose a layer of pomace therein, substantially as described.

JOHN CLARK.

Witnesses:
JAMES A. JACOKES.
GEORGE W. SMITH.

(Endorsed:) U. S. C. C., N. D. S. N. Y. The Clark Pomace Holder Company against William H. Ferguson. Plaintiff's Exhibit No. 1. J. M. R.

395 DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE.

To all persons to whom these presents shall come, Greeting:

This is to certify that the annexed is a true copy from the records of this office of the letters patent granted John Clark March 3, 1874, No. 148,034, for improvement in wine and cider presses.

In testimony whereof I, E. M. Marble, Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed this twentieth day of August, in the year of our Lord one thousand eight hundred and eighty-one, and of the Independence of the United States the one hundred and sixth.

[SEAL.] E. M. MARBLE,
Commissioner.

No. 148,034.

THE UNITED STATES OF AMERICA.

To all to whom these presents shall come:

Whereas John Clark, of Detroit, Michigan, has presented to the Commissioner of Patents a petition praying for the grant of letters patent for an alleged new and useful improvement in wine and cider presses, a description of which invention is contained in the specification, of which a copy is hereunto annexed and made a part hereof, and has complied with the various requirements of law in such cases made and provided; and

Whereas, upon due examination made, the said claimant is adjudged to be justly entitled to a patent under the law:

Now, therefore, these letters patent are to grant unto the said John Clark, his heirs or assigns, for the term of seventeen years from the third day of March, one thousand eight hundred and seventy-four, the exclusive right to make, use, and vend the said invention throughout the United States and the Territories thereof.

In testimony whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed, at the city of Washington, this third day of March, in the year of our Lord one thousand eight hundred and seventy-four, and of the Independence of the United States of America the ninety-eighth.

[SEAL.] B. R. COWAN,
Acting Secretary of the Interior.

Countersigned:
M. D. LEGGETT,
Commissioner of Patents.

(Here follows diagram marked p. 396.)

397 UNITED STATES PATENT OFFICE.

JOHN CLARK, of Detroit, Michigan.

Improvement in Wine and Cider Presses.

Specification forming part of Letters Patent No. 148,038, dated March 3, 1874; application filed September 6, 1873.

To all whom it may concern:

Be it known that I, John Clark, of Detroit, in the county of Wayne and State of Michigan, have invented an improvement in cribs and pomace frames for wine and cider presses, of which the following is a specification:

The nature of this invention relates to an improvement in the construction of the cribs of wine and cider presses, and to the pomace frames used in connection therewith, the object being, first, to facilitate the placing in and the removal of the "cheese;" secondly, to avoid the necessity, when the cheese is partially pressed, of backing up the follower and putting in of more blocking under it to complete the pressing; thirdly, to avoid inequalities in the degree of pressure throughout the cheese to break the pomace frames by the use of such as will give — to inequalities in the mass; and, fourthly, to produce clear and limpid juice by the substitution of flexible pomace frames and factory cloths for straw or coarse burlaps, the use of which is enabled by the said frames. The invention consists in the peculiar construction of the crib and flexible pomace frames.

Figure 1 is the perspective view of the crib, with one of the end or follower sections removed. Fig. 2 is a similar view, showing one of the upper sections of the longer sides removed. Figure 3 is a perspective view of a flexible pomace frame extended.

In the drawing A A represent vertical bars of wood, square in section, to which are nailed on the outside the rails B B, near their upper and lower ends, forming the sides and ends of the crib, the panels being secured by the notched bars C, interlocked at the corners. The bars of the end panels are of full length, usually four feet, while those of the longer sides are but half that height. A^1 A^1 are the bars of the upper half of each longer side of the crib, to all of which are nailed the rails B B′. These bars rest upon the tops of the lower ones, being secured as panels at the bottom by the upper set of notched bars C, while their upper ends are secured by the upper set of notched bars C′. The middle set of bars C overlap the lower ends of the bars of the upper panels, and the upper ends of those of the lower panels, so that the three sets of notched bars will keep the four sides of the crib in place. A small panel, A^2, in the upper half of each end panel, is made removable, so that in the descent of the follower to the top of the crib they may be removed, and thus allow the pressing to be completed without being under the necessity of backing up the follower and placing blocks under it, as has heretofore been the case. The pomace frames are composed of a series of bars, D, connected by cords *a*, tacked to them near their ends, making them perfectly flexible.

As ordinarily constructed, press cribs are four feet deep, and are awkward and unhandy to fill with pomace and to remove the cheese. By dividing the sides the process is much facilitated and the labor lightened.

In laying up the cheese a flexible frame is first laid in, and on it a fine factory or cotton muslin large enough to fold over the layer is laid, and on it is spread the pomace to a depth of about five inches. The cloth is then folded over the layer, and on it is placed another frame and another layer, as before, and so on until the crib is filled to the top. By using the flxible frames in this manner I am enabled to use fine cloth, instead of straw or coarse burlaps, through which to strain the expressed juice, and thus arrest the smaller particles of crushed fruit, which discolor and give a bad flavor to the cider or wine, and thereby make a clear and bright article, much more valuable than that made in the ordinary way.

What I claim as my invention, and desire to secure by letters patent, is—

1. The slotted press crib, having its longer panels constructed in two sections, the whole being secured by the notched bars C C C′, substantially as described and shown.

2. In a sectional press crib, constructed substantially as herein described, the removable panels A^2 in the ends thereof, in the wake of the follower, as and for the purpose set forth.

3. A flexible pomace frame composed of the bars D, connected by the cords *a*, substantially as described and shown.

JOHN CLARK.

Witnesses:

H. F. EBERTS.

H. S. SPRAGUE.

(Endorsed:) U. S. C. C., N. D. S. N. Y. The Clark Pomace Holder Company against William H. Ferguson. Plaintiff's Exhibit No. 2, J. M. R.

398 DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE.

To all persons to whom these presents shall come, greeting:

This is to certify that the annexed are true copies from the records of this office of four (4) assignments recorded in the volumes as stated on the margin of each copy, respectively, and said records have been carefully compared with the originals and are correct transcripts thereof.

In testimony whereof I, E. M. Marble, Commissioner of Patents, have caused the seal of the Patent Office to be affixed this twenty-first day of October, in the year of our Lord one thousand eight hundred and eighty-one, and of the Independence of the United States the one hundred and sixth.

[SEAL.]

E. M. MARBLE,
Commissioner.

Liber H 23, page 410.

Know all men by these presents that I, Charles G. Hampton, of Detroit, Michigan, for a valuable consideration to me duly paid by "The Clark Pomace Holder Company," a body corporate, located at the city of Syracuse, N. Y., hereby sell, assign, transfer, and set over to said company all my right, title, and interest, being the equal, undivided one-fourth in and to two certain letters patent of the United States issued to John Clark, of Pontiac, Michigan, dated and numbered, respectively, March 3, 1874, No. 148,034, and February 6, 1877, No. 187,100.

Witness my hand, at Syracuse, N. Y., this 15th day of October, 1878.

[L. s.] CHARLES G. HAMPTON.

Witnesses:
JOHN CLARK.
M. A. KNAPP.

Recorded October 18, 1878. Ex'd: H. M. H.

399 Liber H 23, page 410.

Know all men by these presents that I, George B. Boomer, of the city of Syracuse, N. Y, for a valuable consideration, to me duly paid by "The Clark Pomace Holder Company," a body corporate, located at the same place, hereby sell, assign, transfer, and set over to said company all my right, title, and interest, being the equal and undivided one-fourth in and to two certain letters patent of the United States issued to John Clark, of Pontiac, Michigan, dated and numbered, respectively, March 3, 1874, No. 148,034, and February 6, 1877, No. 187,100.

Witness my hand, at Syracuse, N. Y., this 15th day of October, 1878.

[L. s.] GEO. B. BOOMER.

Witnesses:
F. W. BARKER.
M. A. KNAPP.

Recorded October 18, 1878. Ex'd: H. M. H. E. A. M.

Liber H 23, page 410.

Know all men by these presents that I, John Clark, of Pontiac, Michigan, for a valuable consideration, to me duly paid by "The Clark Pomace Holder Company," a body corporate, located at the city of Syracuse, N. Y., hereby sell, assign, transfer, and set over to said company all my right, title, and interest, being the equal and undivided one-half — in and to two certain letters patent of the United States issued to me, the said John Clark, dated and numbered, respectively, March 3, 1874, No. 148,034, and February 6, 1877, No. 187,100.

Witness my hand, at Syracuse, N. Y., this 15th day of October, 1878.

[L. S.] JOHN CLARK.

Witnesses:
CHARLES G. HAMPTON.
M. A. KNAPP.

Recorded October 18, 1878. Ex'd: H. M. H. E. A. M.

400 Liber J 21, page 180.

Whereas I, John Clark, of Pontiac, in the county of Oakland and State of Michigan, did obtain certain letters patent of the United States, which letters patent bear date and are numbered, respectively, March 3, 1874, No. 140,034, and February 6, 1877, No. 187,100; and

Whereas Charles G. Hampton, of Detroit, in the county of Wayne and State aforesaid, is desirous of acquiring an interest therein; now, therefore—

Be it known that for and in consideration of the sum of five hundred dollars to me in hand paid, the receipt whereof is hereby confessed and acknowledged, I have hereby sold, assigned, and set over unto the said Charles G. Hampton, his heirs, administrators, executors, or assigns, an undivided half interest in and to said letters patent for, to, and in the entire of the United States and the Territories thereto belonging; to have and to hold to his use and behoof, and to the use and behoof of his legal representatives, as fully as I myself might have held and enjoyed the same had this assignment and sale not been made by me.

Witness my hand the 17th day of February, 1877.

[L. S.] JOHN CLARK.

Signed in the presence of—
THOS. S. SPRAGUE.
H. F. EBERTS.

Recorded February 22, 1877. Ex'd: H. M. H. E. A. M.

(Endorsed:) U. S. *S.* C. C., N. D. S. N. Y. The Clark Pomace Holder Company *vs.* William H. Ferguson. Plaintiff's Exhibit No. 3. J. M. R.

401 DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE.

To all persons to whom these presents shall come, Greeting:

This is to certify that the annexed is a true copy from the records of this office of an assignment from Charles G. Hampton to George B. Boomer, recorded in liber W 22, page 378; and that said annexed record has been carefully compared with the original, and is a correct transcript thereof.

In testimony whereof I, E. M. Marble, Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed this twentieth day of August, in the year of our Lord one thousand eight

hundred and eighty-one, and of the Independence of the United States the one hundred and sixth.

E. M. MARBLE,
Commissioner.

Liber W 22, page 378.

Know all men by these presents that whereas one John Clark, of Pontiac, in the county of Oakland and State of Michigan, did obtain certain letters patent of the United States, which letters patent bear date and are numbered respectively, March 3, 1874, No. 148,034, and February 6, 1877, No. 187,100; and whereas the said John Clark did, on the 17th day of February, 1877, assign an undivided one-half interest in said letters patent to Charles G. Hampton, of Detroit, in the county of Wayne and State of Michigan; and whereas George B. Boomer, of Syracuse, in the county of Onondaga, and State of New York, is desirous of obtaining an interest therein:

Now, therefore, be it known that for and in consideration of the sum of two hundred and eighty-five dollars to me in hand paid, the receipt whereof is hereby confessed and acknowledged, I, the said Charles G. Hampton, have sold and assigned, and by these
402 presents do sell, assign, and set over, unto the said George B. Boomer, his heirs, administrators, and assigns, an undivided half of the above-described and assigned half interest, the same being an undivided one-quarter interest in and to said letters patent for, to, and in the entire of the United States and Territories thereto belonging; to have and to hold for his own use and benefit and the use, benefit, and behoof of his legal representatives and assigns, as fully as I might myself have held and enjoyed the same had this sale and assignment not been by me made.

In witness whereof I have hereunto set my hand and seal this tenth day of April, 1877.

CHARLES G. HAMPTON.

Signed in presence of—
F. O. DAVENPORT.
W. A. SHAW.

STATE OF MICHIGAN, } ss:
Wayne County, }

On this 11th day of May, 1877, before me, a notary public in and for said county, personally appeared Charles G. Hampton, to me known to be the person described in and who executed the foregoing instrument of assignment, and duly acknowledged the execution thereof to be his free act and deed.

FRANCIS O. DAVENPORT,
Notary Public for Wayne County.

Recorded February 4 1878. Ex'd: H. M. M. M. McK.

(Endorsed:) U. S. C. C., N. D. S. N. Y. The Clark Pomace Holder Company against William H. Ferguson. Plaintiff's Exhibit No. 5. J. M. R.

403 STATE OF NEW YORK, } ss:
City of Syracuse, Onondaga County, }

We, the undersigned, John Clark, Charles G. Hampton, George B. Boomer, William D. Dunning, and Israel Starks, do hereby certify that we have associated ourselves together for the purpose of forming and organizing a corporation under the provisions of an act of the Legislature of the State of New York, entitled "An act to authorize the formation of corporations for manufacturing, mining, mechanical, or chemical purposes," passed February 17th, 1848, and the several acts of said Legislature supplemental thereto and amendatory thereof, and for that purpose do further certify as follows, viz:

First. That the corporate name of said corporation is "The Clark Pomace Holder Company."

Second. That the objects for which said corporation is formed are the manufacture and sale of "Clark's pomace holder," under certain letters patent of the United States issued to John Clark, and dated, respectively, March 3d, 1874, and February 6th, 1877, and the issuing of licenses to other persons for manufacturing and selling the same, and the collection of royalties therefor.

Third. That the amount of the capital stock of said corporation is ten thousand dollars, divided into one hundred shares of one hundred dollars each.

Fourth. That the term of existence of said corporation is to be fifty years.

Fifth. That the number of trustees who shall manage the concerns of said corporation is five, and the names of such trustees for the first year are John Clark, Charles G. Hampton, George B. Boomer, William D. Dunning, and Israel Starks.

Sixth. That the names of the town and county in which
404 the operations of said corporation are to be carried on and where its business office will be located are the city of Syracuse, in the county of Onondaga.

Witness our hands this 14th day of October, 1878.

JOHN CLARK.
CHARLES G. HAMPTON.
GEO. B. BOOMER.
WM. D. DUNNING.
ISRAEL STARKS.

STATE OF NEW YORK, } ss:
Onondaga County, }

On this 14th day of October, A. D. 1878, before me personally appeared John Clark, Charles G. Hampton, George B. Boomer, William D. Dunning, and Israel Starks, to me known to be the persons described in and who executed the foregoing certificate, and they severally before me signed the said certificate and acknowledged that they executed the same for the purposes therein mentioned.

F. W. BARKER,
Notary Public, Onondaga County.

(Endorsed:) Filed October 15, 1878.

STATE OF NEW YORK, *ss:*

OFFICE OF THE SECRETARY OF STATE.

I have compared the preceding with the original certificate of incorporation of "The Clark Pomace Holder Company," with acknowledgment thereto annexed, filed in this office on the 15th day of October, 1878, and do hereby certify the same to be a correct transcript therefrom and of the whole of the said original.

Witness my hand and the seal of office of the secretary of state, at the city of Albany, this fifteenth day of October, one thousand eight hundred and seventy-eight.

[SEAL.] GEO. MOSS.
Deputy Secretary of State.

STATE OF NEW YORK, *Onondaga County,* } *ss:*

CLERK'S OFFICE.

I, Thomas H. Scott, clerk of said county, and of the su-
405 preme and county courts therein, which are courts of record, do hereby certify that I have compared the foregoing copy of a certificate of incorporation with the original thereof recorded, now remaining on file in this office, and that the same is a correct transcript of said original and of the whole thereof, and of the endorsements thereon.

In witness whereof I have hereunto set my hand and official seal, at Syracuse, this 21st day of October, 1878.

[SEAL.] THOMAS H. SCOTT, *Clerk.*

(Endorsed:) U. S. C. C., N. D. S. N. Y. The Clark Pomace Holder Company against William H. Ferguson. Plaintiff's Exhibit No. 8. J. M. R.

406 DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE,

To all persons to whom these presents shall come, Greeting:

This is to certify that the annexed is a true copy from the files of this office of the file wrapper and contents in the matter of the letters patent granted John Clark February 6, 1877, No. 187,100, for improvement in cheese formers for cider presses.

In testimony whereof I, E. M. Marble, Commissioner of Patents, have caused the seal of the Patent Office to be affixed this eighteenth day of October, in the year of our Lord one thousand eight hundred and eighty-one, and of the Independence of the United States the one hundred and sixth.

[SEAL.] E. M. MARBLE,
Commissioner.

Power of Attorney.

Know all men by these presents that I, John Clark, have appointed Thomas S. Sprague, of Detroit, and Geo. W. Dyer & Co. my attorney, with full power of substitution and revocation, to prosecute the accompanying application before the Patent Office of the

United States; to alter or amend the specifications as may be necessary, or as he may deem best; to receive any letters patent that may be granted me therefor, and to do all other acts that may be necessary in the premises.

Witness my hand this — day of August, anno Domini, 1876.

JOHN CLARK.

In the presence of—
GEORGE W. SMITH.
JAMES A. JACOKES.

Application.

To the Commissioner of Patents:

Your petitioner respectfully prays that letters patent may be granted to him for this improvement described in the accompanying application.

Pontiac, Mich., August, 1876.

JOHN CLARK.

Affidavit.

STATE OF MICHIGAN, }
County of Oakland, } *ss:*

On this 23d day of August, A. D. 1876, personally appeared before me, a justice of the peace in and for said county, the within-named John Clark, and made solemn oath that he verily believes that he is the first and original inventor of the improvement described in the accompanying application; that he verily believes the same was never before known or used prior to his invention thereof, and that he is a citizen of the United States.

SAMUEL E. BEACH,
Justice of the Peace.

407 To all whom it may concern:

Be it known that I, John Clark, of Pontiac, in the county of Oakland and State of Michigan, have invented an improvement in cheese formers for cider presses, of which the following is a specification:

The object I have in view is in laying up a "cheese" for the cider press, where each layer is folded up in a cloth to secure uniformity of thickness of all the layers in the mass, or cheese, and thus secure uniform pressure on its entire area, and to avoid all tendency to break the pomace frames or racks. To this end it consists in the employment of a guide-frame, in combination with extended pomace racks, as more fully hereinafter set forth.

Figure 1 is a perspective view, showing the manner of laying up a cheese in a press. Figure 2 is a cross-section at *x x*. In the drawing, A represents the lower frame-work of a cider press, on which is laid the bed, B. C is a pomace rack, which may be rigid as shown, or flexible, as described in letters patent number 148,034, issued to me March 3, 1874; on this rack is laid a guide-frame, D, whose bottom girts are not spaced far enough apart to extend the full length

of the rack on which they rest; a cloth, E, large enough to envelop the layer is then laid on the rack inside the frame, and opened out to receive the pomace, which is "struck" level with the girts of the frame, after which the cloth is folded over the leveled pomace, and the frame is lifted off; the next and succeeding racks are in like manner laid on the first and filled up, and a follower is placed on the upper one, when the cheese is ready to press; laid up in this way the several layers are uniform in thickness, and the cheese, in mass, is level on top, and offers a uniform resistance to the pressure over its entire area, thus assuring the expression of all the juice and precluding all danger of breaking the pomace-racks.

If the bed B be extended a cheese may be built up on a board while one is being pressed, and then be slid under the follower when the first one is removed.

What I claim as my invention is the guide-frame D, in
408 combination with an extended pomace-rack and a cloth to enclose a layer of pomace therein, substantially as described.

JOHN CLARK.

Witnesses:
JAMES A. JACOKES.
GEORGE W. SMITH.

Memorandum of Fee Paid at United States Patent Office.

Inventor, John Clark. Patent to be issued to —— ——. Invention, cheese formers for cider presses. Allowed September 14, '76. Date of payment, February 2, '77. Fee, twenty dollars. Solicitor, Geo. W. Dyer & Co.

No. 188,100. 1876. 33–38. Schoepf.

John Clark, of Pontiac, county of Oakland, State of Michigan. Cheese formers for cider presses.

Received	September 11, 1876.	
Petition	"	"
Affidavit	"	"
Specification	"	"
Drawing	"	"
Model	"	"
Cert. dep., $15	"	"
Cash		
Additional fee cert.		
Additional fee—cash, $20	Feb'y 2, 1877	
Examined Sept. 14, '76, A. Schoepf		
Issued Sept. 14, '76. M. D. Peck		
Patented Feb. 6, 1877		
Circular Sept. 14, '76		

THOMAS S. SPRAGUE,
Detroit, Mich.
GEO. W. DYER & CO., *Present.*

409 1876.

Contents.

Application papers.

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Title.

Improvement in cheese formers for cider presses.

Ex'd: H. M. H. E. A. M.

UNITED STATES PATENT OFFICE.

JOHN CLARK, of Pontiac, Michigan.

Improvement in Cheese Formers for Cider Presses.

Specification forming part of Letters Patent No. 187,100, dated February 6, 1877; application filed September 11, 1876.

To all whom it may concern:

Be it known that I, John Clark, of Pontiac, in the county
410 of Oakland and State of Michigan, have invented an improvement in cheese formers for cider presses, of which the following is a specification:

The object I have in view is in laying up a "cheese" for the cider press, where each layer is folded up in a cloth to secure uniformity of thickness of all the layers in the mass or cheese, and thus secure uniform pressure on its entire area, and to avoid all tendency to break the pomace frames or racks. To this end it consists in the employment of a guide-frame in combination with extended pomace racks, as more fully hereinafter set forth.

Figure 1 is a perspective view, showing the manner of laying up a cheese in a press.

Fig. 2 is a cross-section at *x x*.

In the drawing A represents the lower frame-work of a cider press, on which is laid a bed, B. C is a pomace rack, which may be rigid, as shown, or flexible, as described in letters patent No. 148,034, issued to me March 3, 1874. On this rack is laid a guide-frame, D, whose bottom girts are not spaced far enough apart to extend the full length of the rack on which they rest. A cloth, E, large enough to envelop the layer, is then laid on the rack inside the frame and opened out to receive the pomace, which is "struck" level with the girts of the frame, after which the cloth is folded over the level pomace and the frame is lifted off. The next and succeeding racks are in like manner laid on the first and filled up, and a follower is placed on the upper one when the cheese is ready to press. Laid up in this way, the several layers are uniform in thickness, and the cheese in mass is level on top and offers a uniform resistance to the pressure over its entire area, thus assuring the expression of all the juice and precluding all danger of breaking the pomace racks.

If the bed B be extended, a cheese may be built upon a board while one is being pressed and then be slid under the follower when the first one is removed.

What I claim as my invention is—

The guide-frame D, in combination with an extended pomace rack, and a cloth to inclose a layer of pomace therein, substantially as described.

JOHN CLARK.

Witnesses:
JAMES A. JACOKES.
GEORGE W. SMITH.

(Endorsed:) U. S. C. C., N. D. S. N. Y. The Clark Pomace Holder Company against William H. Ferguson. Plaintiff's Exhibit No. 12. J. M. R.

411 VOORHEESVILLE, *April* 25, 1881.

Mr. G. B. Boomer.

DEAR SIR: Yours of the 20th received. As I have a reply from Mr. Dunning, of Syracuse, and they seem to favor us, so as to give a chance for me to say what I can why we should not pay royalty on the pomace holder, I will not ask to have anything published that would effect a change in matters until I hear their final answer and they sue me. If they think I cannot prove what I have asserted very plain to them they will go for me, and then I shall try and defend myself in every way that I can. I like the sound of your letter. Although you own stock in it, if it is not straight and square you would be the first to wipe it out. I also own stock in a patent bought directly from the inventor, and I have suffered to the amount of $3,000. That money had to go when I was first married, and only those who have been in like circumstances can imagine what a terrible thing it was. I did not dare to think nor ever estimate how much the interest would be, but would welcome anything if it would only give me rest from the fearful thought. I paid it in six years, then began

fresh, let the money and the patent go, and learned a lesson that will not be forgotten while I live. Now, let those parties fairly believe what I say, that we have used these things for years before they did or before they gave any notice of it that we could possibly know of, and I think they would give up the idea of collecting from us, but they cannot believe it. I suppose a great many say the same thing, and they now cannot be fooled with chaff, but I know that if they sue me that they will pay the cost dearly in the end.

I do not want to spend any money in it, and I do not think that the company does either.

I will not have it taken from me unfairly, but if it belongs to them I will pay it and no talk back. This is the way we got into the present use of the pomace holder: We had a press with a crib just like yours, and one without a crib; with the crib we used cloths and racks, but one day we tried the cloths and the form in the place of straw (did not have any more straw thrashed), but the cloths split apart and were torn, so my brother said that there should be something to hold them, and the next cheese we put one of the slats between the layers and we had it; the next one we put two slats side by side, as they were too small alone; when these got old I made new ones, slats all in one piece, large enough, six inches outside the form all round; that day we had the combination.

Yours truly,

W. H. FERGUSON.

Voorheesville, N. Y.

(Endorsed:) United States circuit court, northern district of New York. The Clark Pomace Holder Company ag't William H. Ferguson. Complainant's Exhibit No. 1. December 12, 1881. E. W. R., Sp. examiner and notary.

412 HOWE'S CAVE, *April* 25, 1881.

W. E. Ward, Esq.

DEAR SIR: Your letter just received. It has been to three different post offices. Can you give me a little time to attend to it? I am so situated at present that it would put me to a great deal of trouble. I have not the money at present, but can have it about the first of June. I am coming to Albany about that time, and then can better attend to it. I had no idea that I should ever have to pay for the use of "cloth and racks," as I have used them from ten to twelve years and supposed I was the first user of them; but, of course, I can do nothing more than abide by the law. I will call at your office about the first week in June. Hoping you can give me until then to settle it in, I remain,

Yours truly, GEORGE CASPER.

(Endorsed:) United States circuit court, northern district of New York. Clark Pomace Holder Company ag't Ferguson. Complainant's Exhibit No. 2. December 13, 1881. E. W. R. Sp. Ex. and notary.

(Here follow diagrams marked pages 413, 414.)

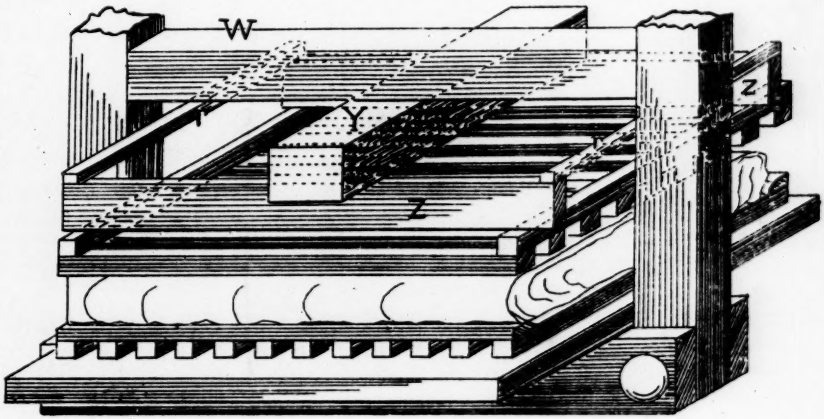
Defendants Exhibits

UNITED STATES CIRCUIT COURT—NORTHERN DISTRICT OF NEW YORK.

No. 58 / 301. The Clark Pomace Holder Company *agt.* William H. Ferguson. } p. 413.

DEFENDANT'S EXHIBIT No. 2, OF JANUARY 12, 1882. E. W. R., SP. EX. AND NOTARY.

Prospective view, Clark's Guide Frame (Letters Patent No. 187,100, Feb. 6. 1877), in connection with racks and cloths.



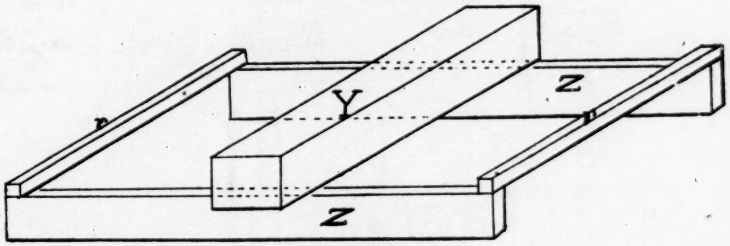
(No. 2, A. S.)

UNITED STATES CIRCUIT COURT—NORTHERN DISTRICT OF NEW YORK.

The Clark Pomace Holder Company
No. ~~301~~ 58 *agt.* p. 413
William H. Ferguson.

DEFENDANT'S EXHIBIT No. 3, OF JANUARY 12, 1882, E. W. R., SP. EX. AND NOTARY.

Prospective view of Clark's Guide Frame (Letters Patent 187,100, *Feb.* 6, 1877.)

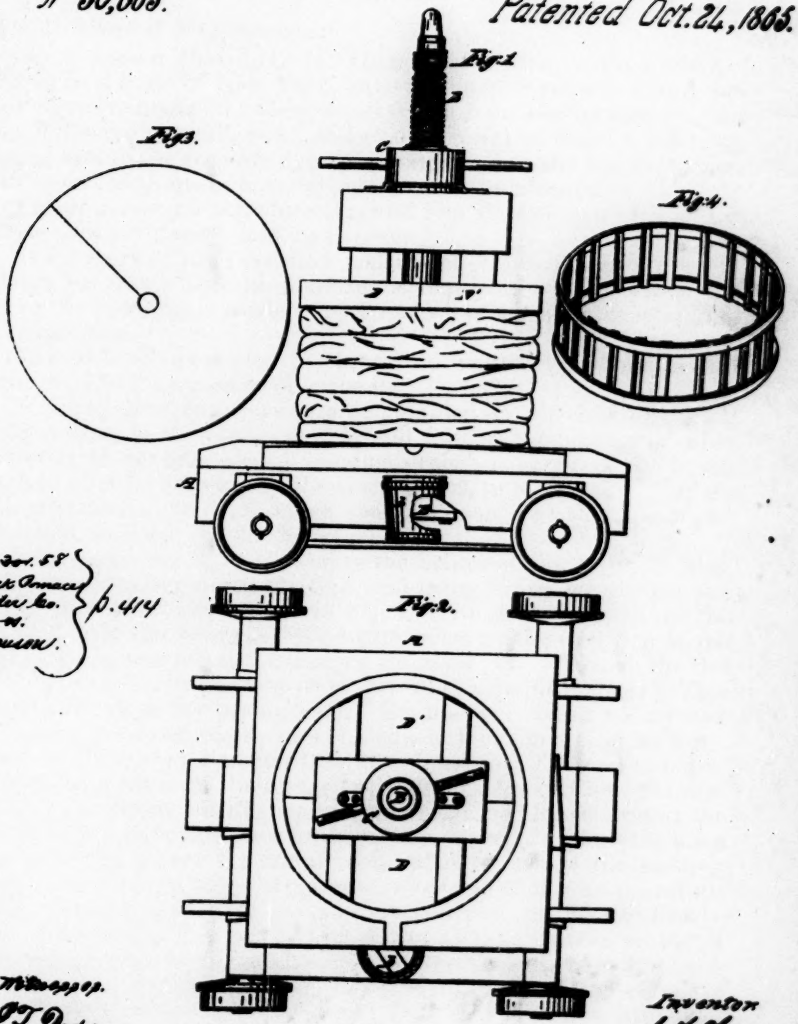


(No. 3. A. S.)

C. H. Thomas.

Cider Press.

No. 50,665. Patented Oct. 24, 1865.



No. 301. 58
Clark Furnace
Holder Co.
vs.
Ferguson.
p. 414

Witnesses.
P. T. Dodge
Thomas J. Gardner

Inventor
C. H. Thomas
By W. C. Dodge

415 UNITED STATES PATENT OFFICE.

CHARLES H. THOMAS, of Milton, New York, assignor to himself and Hermon Thomas, of same place.

Improvement in Cider-Presses.

Specification forming part of Letters Patent No. 50665, dated October 24, 1865.

To all whom it may concern:

Be it known that I, C. H. Thomas, of Milton, in the county of Ulster and State of New York, have invented certain new and useful improvements in cider-presses; and I do hereby declare that the following is a full, clear, and exact description thereof, reference being had to the accompanying drawings, and to the letters of reference marked thereon, making part of this specification—

Figure 1 being a side elevation, and Fig. 2 a top plan view, of the press with a "cheese" laid up thereon.

The nature of my invention consists in constructing a press in which no frame but the platform is required, and in which the screw in pressing is made to pull instead of pushing, as is ordinarily the case.

To enable others skilled in the art to construct and use my invention, I will proceed to describe it.

A represents a platform or frame mounted on wheels, and having a tight flooring thereon to receive and support the pomace or other material to be pressed. A circular groove, *a*, is cut in the upper surface of the platform, as shown in Fig. 2, to receive and conduct the juice into a vessel, *b*, which may be located by the side of the platform, as shown in the drawings.

A strong screw, B, is secured to the center of the frame or platform A, extending down through, and being firmly attached to the under side thereof, as shown in Fig. 1. A nut, C, is fitted on the screw B, said nut being provided with holes for the insertion of the end of a lever or levers for turning the same; or, if desired, the nut may be operated by gearing, or in any other suitable manner. This constitutes all of my press proper. To use it I commence by first providing pieces of coarse sacking, which I cut in a circular form, somewhat larger in diameter than the cheese that I intend to make. I then cut a slit from the center to the outer edge of these pieces of sacking, as shown in Fig. 3, so that it can be placed around the screw B, and have the latter in the center thereof. I place the hoop shown in Fig. 4 over the screw, then place a piece of the sacking therein, leaving its edges hanging over outside of the hoop, and fill in the pomace equally all around the screw until the hoop is nearly full. I then turn the outer edges of the sacking over in on top of the pomace, and, laying another piece of sacking thereon and raising the hoop, proceed as before, and so continue until the cheese is completed. I then place the planks D D′ on the cheese, with suitable blocks, and screw down the nut C.

It will be observed that by this arrangement I dispense with the

heavy and expensive frame usually made use of in cider-presses, and that consequently there is no necessity for removing and replacing the lever every time a half-turn or less is given to the screw, as is ordinarily the case, there being no frame to prevent the person or horse, in case one is used, from traveling round in a continuous circle. By making the cheese round I avoid the corners which occur when made square in the usual manner, and, as all portions of the periphery of the cheese are equidistant from the screw, it follows that all portions will be pressed equally.

Another advantage is that, as the platform and planks at the top will naturally yield somewhat as the pressure is applied, they will be brought nearest together at the center, where the screw bears upon them, and thus, as the pressure is applied at the center of the cheese first, the juice will be driven from the center outward, thus securing a thorough expulsion of the juice.

By using the sacking I get rid of the use of straw, and thereby keep a great amount of chaff, dust, and dirt from becoming mixed with the juice; but the great advantage of my press is that, by applying the pressure in the manner shown, the screw is made to pull or draw, instead of pushing, and thus I avoid all tendency of the screw to buckle or bend, and also prevent the cheese from settling over to one side. It is obvious that where the pressure is applied in this manner the screw will stand a much greater amount of strain than where it is made to press by pushing.

By mounting the press on car-wheels, as shown, it can be easily run on a temporary railway of wood or iron, and thus moved to the grinding-vat when the cheese is to be made up, and as readily moved to a tank into which it is desired to have the juice flow.

416 So, also, when the pomace is to be thrown out, the press can be run to the door, and the refuse be thrown out at once, thus saving the time and labor of carrying it out by hand.

I usually strain the juice through flannel placed within the sacking, and thus render it very clean and pure.

Having thus fully described my invention, what I claim is—

1. A cider-press consisting of the platform A, mounted on wheels and provided with the stationary screw B and nut C, arranged and operating as and for the purpose set forth.

2. In combination with a press, constructed as described, the use of the sacking, as and for the purpose set forth.

CHAS. H. THOMAS.

Witnesses:
W. C. DODGE.
J. F. CALLAN.

(Endorsed:) U. S. C. C., N. D. of N. Y. The Clark Pomace Holder Company *vs.* William H. Ferguson. In Equity. Defendant's Exhibit No. 1, of April 28th, 1882. E. W. R., Sp. Ex. & notary.

(Here follows diagram marked p. 417.)

418 UNITED STATES PATENT OFFICE.

JONATHAN HOLBROOK, of Sherburne, Massachusetts.

Improvement in Cider-presses.

Specification forming part of Letters Patent No. 117,075, dated July 18, 1871.

To all whom it may concern:

Be it known that I, Jonathan Holbrook, of Sherburne, of the county of Middlesex and State of Massachusetts, have invented a new and useful improvement in presses for expelling the juice from apples and other fruits; and do hereby declare the same to be fully described in the following specification and represented in the accompanying drawing, of which—

Figure 1 is a front elevation, Fig. 2 a longitudinal section, and Fig. 3 a transverse section of my improved press. Fig. 4 is an end elevation of it.

In such drawing A denotes the bed of the press, provided with two posts, B B, and a cross-bar, C, the latter being extended from the upper part of one post to that of the other and fixed to both, as shown. Furthermore, the bed has a ledge, *a*, projecting from its upper surface and carried around parallel with the sides and ends of the bed, so as to form, with the bed, a shallow receiver or trough, out of which there is led an educt, *b*, such educt being made to open out of a series of grooves, *c c*, made across the upper surface of the bed. Resting on the bed, and within the receiver formed by the ledges, and against such ledges, are four series of vertical slats, *d*, each series being fastened to a series of horizontal timbers or bars, *e e e*. The bars *e* at the ends of the press are arranged at right angles with those of the sides, and are scarped or locked upon them or fastened to them, so as to form, with the base, a receptacle for holding the matter to be pressed. One side of the receptacle should be applied so as to be capable of being removed from the rest. The upright bars and their horizontal bars of each series constitute a frame, there being to the top bar of each frame a cap-bar, *f*, provided with screws, *g g*, which go through it near the ends and screw into the top bar, the same serving to hold in place a cloth, *h*, there being one of such cloths arranged against the inner side of each frame, the whole being as shown. With the press-receiver so made there is to be employed a series of lattice-work partitions, G G, each being composed of two series of slats, *h i*, those of such series being arranged parallel and at short distances apart and at right angles to the other series, they being riveted or otherwise secured together. These divisional partitions are to be of a size to fit within the receiver, and, when used, there is to be one or more layers of cloth, *k*, placed on the top of each of them. Arranged within the receiver is a cross-bar, D, from which two screws, E E, project upward, in manner as shown, and screw through the hubs of two large worm-gears, F F, arranged just beneath the bar C, and supported on a rest-plate, H, fastened thereto, and arranged as represented. These worm-gears mutually engage with a screw or worm, H, arranged between them and fixed

on a shaft, I, arranged in hangers, K K, extended down from opposite edges of the bar C. The threads of the screws are to be pitched in opposite directions, as shown, and the screws extend up through the bar C without being screwed into it. On revolving the shaft I both of the worm-gears will be simultaneously revolved, so as to either raise or depress the screws and their connecting bottom bar. I would observe that the hub of each worm-gear is socketed or chambered from its lower end upward, as shown at *l*, to receive a cylinder or block, *m*, in which the female screw *n* is cut to operate with the male screw E, the block *m* being held in place and from revolving in the hub by two screws, *o o*, screwed partly into the hub and partly into the block. This construction of each of the worm-gears and combination with it of the separate nut is very advantageous, as such admits of the ready removal of the nut when worn and the substitution of another or fresh one.

In using the said press boards or planks are to be laid on the top of the mass to be pressed, and crosswise underneath the bar D. In charging the press with apples or fruit there are to be alternate layers of such and the partitions G G. After the pile may have been completed and the top plank may have been duly arranged, the shaft of the pressing machinery may be put in revolution in a manner to cause the screws E E to descend and force the bar D down upon the pile, in consequence of which the fruit will be crushed and the juice be expressed through the filtering cloths or shams, and will run in various directions through the channels of the partitions and out through the lateral or vertical filters or straining-cloths, and from thence down through the channels between the vertical side bars, and thence into the shallow receiver or trough of the base, and finally escape through the educt thereof.

419 The construction of the press-box enables it to be readily taken apart at any time for being cleaned, in order to prevent the formation of mold or must.

This press has been found to be remarkably efficient in expressing the juice of apples for the conversion of such into cider or vinegar, it being ejected in strained state, fit for being at once put into casks.

I make no claim to the combination and arrangement of the bar D, the two screws E E, the nuts, the worm-gears, and the worm and its shaft; nor do I claim the nuts and gears as constructed and applied, as set forth.

I claim as my invention—

The arrangement of the base A, ledge *a*, educt *b*, slats *d d*, horizontal bars *e e*, cap-bar *f*, and straining-cloths *h h*, all substantially as and for the purpose as set forth.

JONATHAN HOLBROOK.

Witnesses:
R. H. EDDY.
J. R. SNOW.

(Endorsed:) U. S. C. C., N. dist. of New York. The Clark Pomace Holder Company *vs.* William H. Ferguson. Defendant's Exhibit No. 2, of April 28th, 1882. E. W. R., Sp. Ex. & notary.

(Here follows diagram marked p. 420.)

421 UNITED STATES PATENT OFFICE.

JOHN SHINN, of Leverington, Philadelphia, Pennsylvania, assignor to himself and George S. Rhodes.

Letters Patent No. 63951, dated April 16, 1867.

Improvement in Press Boards for an Oil Press.

The schedule referred to in these letters patent and making part of the same.

To all whom it may concern:

Be it known that I, John Shinn, of Leverington, in the Twenty-first ward of the city of Philadelphia and the State of Pennsylvania, have invented a new and useful improvement in press boards for an oil press, and I do hereby declare that the following is a full, clear, and exact description thereof, reference being made to the accompanying drawings and the letters of reference marked thereon.

The nature of my invention consists in constructing press boards for oil presses, of wood or metal, with a series of grooves running longitudinally across the board or plate, and covering these grooves with a wire screen, the object of which is to expedite the flow of oil in pressing.

To enable others skilled in the arts to make and operate my improvement I will now describe its construction and operation by reference to the drawings:

D is a top view of one of the boards, when made of wood. C is a sectional edge view of the same. The body of the board can be made of soft wood (white or yellow pine). The strips *a b c* should be made of hard wood (maple or beech), and should be about three-eighths of an inch square, and must be nailed across the board parallel to each other, about three-eighths of an inch apart. The under part of the board should be perfectly smooth. When the plates are made of iron they should be constructed as follows: B represents a sectional edge view of the plate, which is of the usual thickness. Across this plate are iron rods parallel to each other, about three-eighths of an inch apart, and riveted to the plate at each end. These rods should be about three-eighths of an inch in diameter. A represents one of the rods, filed flat at each end in order that the hole may be drilled or punched more readily, it being also easier to rivet, the flat part being the top. E represents the wire screen. It should be woven of No. 18 iron wire, and five meshes to the inch, and not quite so large a surface as the wooden or iron plate.

The operation is as follows: The lard or other substance to be pressed is put into bags in the usual way, the wire screen is placed upon the strips or rods, and the bags containing the lard are then placed on the screen; then another board is placed upon the top of the bag with the grooves upward; a screen is then placed upon it, and then a bag, as before described, and so on until the press is full. Then the pressure is applied, and the wire screen will prevent the bags holding the lard or blubber from swelling into and choking up

the grooves. By means of the screen there is a more rapid flow of oil with less pressure.

Modifications may be made in my improvement, such as radiating the grooves from the center, thereby causing a flow of oil from all sides of the plate.

Claim.

I claim a press board or plate formed with grooves running parallel or otherwise, in combination with a wire screen, as described, for the purpose set forth.

JOHN SHINN.

Witnesses:
EDW. HAVERSTICH.
A. P. DOUGLASS.

(Endorsed:) U. S. C. C., N. D. N. Y. The Clark Pomace Holder Company *vs.* William H. Ferguson. Def't's Exhibit No. 1, of June 15, 1882. E. G. D., Sp. Ex. & notary.

422 *Stipulation as to Return & Exhibits.*

Supreme Court of the United States.

THE CLARK POMACE HOLDER COMPANY, Appellant,
against
WILLIAM H. FERGUSON, Appellee,

It is hereby stipulated and ageed that the exhibits and proofs put in evidence in the above action in the circuit court of the United States for the nothern district of New York by the complainant and defendant be sent on to the Supreme Court in the appeal taken herein, and that the same be returned to the clerk of said circuit court after the final determination of said appeal.

And it is further stipulated that the clerk of said circuit court prepare the return record to the Supreme Court from the printed records of the complainant and of the defendant used upon the final hearing in said circuit court.

Dated Albany, August 21st, 1883.

WALTER E. WARD,
Solicitor for Complainant.
WM. H. KING,
Defendant's Solicitor.

(Endorsed:) 3211. Supreme Court United States. The Clark Pomace Holder Company *vs.* William H. Ferguson. Stipulation. Filed Aug. 28, 1883.

423 *Order.*

At a special term of the circuit court of the United States of America for the northern district of New York, in the second circuit, held at

the court-house in Utica, on the 3d day of September, in the year of our Lord one thousand eight hundred and eighty-three.

Present: The Honorable Alfred C. Coxe, judge.

THE CLARK POMACE HOLDER COMPANY
vs.
WILLIAM H. FERGUSON.

On reading and filing the foregoing stipulation, signed by the solicitors for the respective parties hereto, and on motion of Walter E. Ward, solicitor for the complainant—

It is ordered that the clerk of this court be, and he is hereby, authorized to transmit to the clerk of the Supreme Court of the United States, with the return herein, the following original exhibits and models: Complainant's exhibits of October 28th, numbered from 12 to 19 inclusive; number 20 of December 20th; No. 1 of May 30th; also models numbered 9, 10, and 11, and Defendant's Exhibits numbered 1, 2, & 3; number 1 of January 12th; number 1 of May 30th; also models A, B, C, D, and E, and numbered 1, 2, 3, and 4.

ALFRED C. COXE.

(Endorsed:) 3211. U. S. circuit court, nothern district of New York. Clark Pomace Holder Company *vs.* Wm. H. Ferguson. Order to transmit exhibits and models to Supreme Court. Filed Sep. 3, 1883.

424 *Petition on Appeal.*

Supreme Court of the United States.

THE CLARK POMACE HOLDER COMPANY, Appellant,
against
WILLIAM H. FERGUSON, Appellee.

To the Honorable the Supreme Court of the United States:

The appeal of the Clark Pomace Holder Company, the above-named complainant and appellant, respectfully showeth:

That upon the 1st day of June, 1881, the above-named complainant filed its bill in the circuit court of the United States for the northern district of New York against the above-named defendant and appellee for the infringement by said defendant of complainant's letters patent of the United States No. 187,100, dated February 6th, 1877, for an improvement in cheese formers for cider presses, showing the issuing of said letters patent on that day to one John Clark and the assignment thereof to complainant and the infringement thereof by the said defendant, and praying that the said defendant be restrained and enjoined from such infringement and be compelled to account for and pay to the complainant the gains and profits received by the defendant from such infringe-
425 ment and the damages sustained by the complainant therefrom; to which bill the said defendant made answer, filed August 1st, 1881, denying that the complainant was the first and

original inventor of the improvement claimed in said patent and averring, among other things, that the said improvement was well known and in public use in the United States before the complainant invented the same, and the complainant filed his replication to said answer August 12th, 1881, and both parties took proof in said suit, and the said suit was brought on for final hearing before the said circuit court on the 22d day of May, 1883, upon the pleadings and proofs therein; whereupon the said court, on such hearing, decided that said improvement was not patentable, and decreed that said bill be dismissed, with costs to the defendant.

That on the 17th day of July, 1883, a final decree was made and pronounced in the cause, wherein it was, in substance, adjudged and decreed that the said bill of complaint be dismissed, with costs to the defendant to be taxed.

Wherefore this appellant appeals from the whole of said decree of said circuit court of the United States and respectfully prays that the decree of the said circuit court and the bill, answer, pleadings, depositions, evidence, and proceedings in the said cause may be sent to the Supreme Court of the United States without delay, and the said Supreme Court will proceed to hear the said cause anew, and that the said decree of the circuit court and every part thereof may be reversed and a decree made sustaining the said patent
426 and granting the relief prayed far in said bill, with costs, or such other decree as to the said Supreme Court shall seem just.

Dated Syracuse, August 1st, 1883.

THE CLARK POMACE HOLDER COMPANY,
By WILLIAM D. DUNNING, *Its Secretary and Treasurer.*

STATE OF NEW YORK, *City and County of Albany:*

Walter E. Ward, being duly sworn, says that he is solicitor for the complainant in the within cause; that on the 23rd day of August, 1883, at the city of Albany, he served the petition of appeal upon William H. King, Esq., solicitor for defendant and appellee, by delivering to and leaving with him a copy of the same; and that on the 27th day of August, 1883, he likewise delivered to and left with William H. Ferguson, defendant and appellee, a copy of the same at 61 Quay street, in the city of Albany, New York.

WALTER E. WARD.

Sworn to before me this 27th day of August, 1883.

H. E. STERN,
Comm'r of Deeds, Albany, N. Y.

(Endorsed:) 3211. Supreme Court United States. The Clark Pomace Holder Company, appellant, *vs.* William H. Ferguson, appellee, d'f't. Petition on appeal. Allowed. Alfred C. Coxe, judge. Aug. 21st, 1883. Filed Aug. 28, 1883.

427 *Bond on Appeal.*

Supreme Court of the United States.

THE CLARK POMACE HOLDER COMPANY
against
WILLIAM H. FERGUSON.

Know all men by these presents that we, William D. Dunning and Rufus E. Boschert, are held and firmly bound unto William H. Ferguson, Voorheesville, Albany county, State of New York, in the sum of five hundred and fifteen and $\frac{10}{100}$ dollars, lawful money of the United States of America, to be paid to the said William H. Ferguson, his executors, administrators, or assigns; for which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, dated the 18th day of August, one thousand eight hundred and eighty-three.

Whereas the above-named The Clark Pomace Holder Company hath taken an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled action by the circuit court of the United States for the northern district of New York, entered on the 17th day of July, 1883:

Now, therefore, the condition of this obligation is such
428 that if the above-named The Clark Pomace Holder Company shall prosecute its said appeal to effect and answer all costs and damages if it shall fail to make good its plea, then this obligation shall be void.

WM. D. DUNNING. [L. S.]
RUFUS E. BOSCHERT. [L. S.]

Sealed and delivered in presence of—
EDWIN NOTTINGHAM.

UNITED STATES OF AMERICA,
Northern District of New York, } *ss:*

William D. Dunning and Rufus E. Boschert, being severally duly sworn, depose and say, and each for himself saith, that he is a resident of the northern district of the State of New York; that he is worth the sum of one thousand and $\frac{20}{100}$ dollars over and above all his just debts and liabilities.

W. D. DUNNING.
RUFUS E. BOSCHERT.

Sworn to before me this 18th day of August, 1883.
E. NOTTINGHAM,
Notary Public, Onondaga Co., N. Y.

(Endorsed:) Eq. 3211. Supreme Court United States. The Clark Pomace Holder Company, appellant, *vs.* William H. Ferguson, appellee. Bond on appeal and justification. Approved. Alfred C. Coxe, judge. Aug. 21st, 1883. Filed Aug. 21, 1883.

429 *Citation.*

By the Honorable Alfred C. Coxe, one of the judges of the circuit court of the United States for the northern district of New York.

To William H. Ferguson:

Whereas The Clark Pomace Holder Company has lately appealed to the Supreme Court of the United States from a decree lately rendered in the circuit court of the United States for the northern district of New York, made in favor of you, the said William H. Ferguson, and has filed the security required by law, you are therefore hereby cited to appear before the said Supreme Court, at the city of Washington, on the second Monday in October, 1883, to do and receive what may appertain to justice to be done in the premises.

Given under my hand, at the city of Utica, in the northern district of New York, in the second circuit, the 21st day of August, 1833.

ALFRED C. COXE.

430 STATE OF NEW YORK, } ss:
City and County of Albany, }

Walter E. Ward, being duly sworn, says he is solicitor for complainant in the within-entitled action; that on the 23rd day of August, 1883, he served the within citation upon William H. King, solicitor and counsel for defendant, by delivering to and leaving with him a copy of the same, at his office, No. 31 North Pearl street, Albany, N. Y., and at the same time delivering to him a copy of the bond filed on this appeal; and deponent further says that in like manner, on the 27th day of August, 1883, at 61 Quay street, Albany, New York, he served the within citation upon the defendant & appellee, William H. Ferguson, by delivering to & leaving with him a copy of the within citation and at the same time showing him the original, with the signature of Alfred C. Coxe, judge, affixed thereto, and also delivering to and leaving with him a copy of the bond filed on this appeal.

WALTER E. WARD.

Sworn to before me this 27th day of August, 1883.

H. E. STERN,
Comm'r of Deeds, Albany, N. Y.

[Endorsed:] Supreme Court United States. The Clark Pomace Holder Company ag'st William H. Ferguson. Citation.

431 UNITED STATES OF AMERICA, } ss:
Northern District of New York, }

I, William S. Doolittle, clerk of the circuit court of the United States of America for the northern district of New York, in the second circuit, do hereby certify that the foregoing pages, numbered from 1 to 430 inclusive, contain a true and complete transcript of

the record and proceedings, testimony and exhibits had in said court, in the case of The Clark Pomace Holder Company *vs.* William H. Ferguson as the same remain of record and on file in said office (excepting such models and exhibits the originals of which are transmitted in accordance with the stipulation and order hereinbefore set out).

In testimony whereof I have caused the seal of said court to be hereunto affixed, at the city of Utica, in the northern district of New York, in the second circuit, this 6th day of September, in the year of our Lord one thousand eight hundred and eighty-three, and of the Independence of the United States the one hundred and eighth.

[Seal of the U. S. Circuit Court, Northern District N. Y.]

W. S. DOOLITTLE, *Clerk.*

Endorsed on cover: N. New York C. C. U. S. No. 58. The Clark Pomace Holder Company, Appellant, *vs.* William H. Ferguson. Filed 25th September, 1883.

119-335

SUPREME COURT

OF THE

UNITED STATES.

OCTOBER TERM, 1886.

NO. 58.

THE CLARK POMACE HOLDER COMPANY,
Appellant.
AGAINST
WILLIAM H. FERGUSON,
Appellee.

Brief • for • Appellant.

WARD & CAMERON,
FOR APPELLANT.

WALTER E. WARD,
OF COUNSEL.

ALBANY, N. Y.:
REYNOLDS & WILLCOX, LAW PRINTERS,
1886.

SUPREME COURT

OF THE

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NO. 58.

THE CLARK POMACE HOLDER COMPANY,
Appellant.
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Brief for Appellant.

WARD & CAMERON,
FOR APPELLANT.

WALTER E. WARD,
OF COUNSEL.

ALBANY, N. Y.:
REYNOLDS & WILLCOX, LAW PRINTERS,
1886.

ant be restrained and enjoined from such infringement, and be decreed to account for and pay to the complainant the gains and profits received by the defendant from such infringement, and the damages sustained by the complainant therefrom.

The defendant's answer, which is found on pages 7 to 11 of the record, denies all the material allegations of the complaint, and alleges that the invention was abandoned by said Clark, and was in public use in the United States for more than two years prior to the date of the application for the patent.

The cause was brought to a final hearing before the Hon. Alfred C. Coxe, District Judge sitting in Circuit, who rendered a decision in favor of the defendant, which decision is found on pages 14 to 18 of the record, whereupon a decree was entered dismissing said complaint (see record, page 13), from which decree complainant has appealed to this court. The appellant alleges, as an assignment of errors, that the learned judge who heard the cause, erred in the following particulars:

FIRST, in deciding that the combination claimed in said patent was simply an aggregation of parts, and not a patentable combination.

SECOND, in deciding that said patent was void for want of invention.

THIRD, in deciding that the invention described and claimed in the patent had been in public use for more than two years prior to the date of the application for said patent.

FOURTH, in directing a decree for the defendant instead of for the complainant.

In order to properly understand these objections, let us first examine the patent itself, and the invention therein claimed, in the light of the prior state of the art.

The Clark Patent, No. 187,100.

A certified copy of the letters patent is shown in full on pages 284 to 286 of the record.

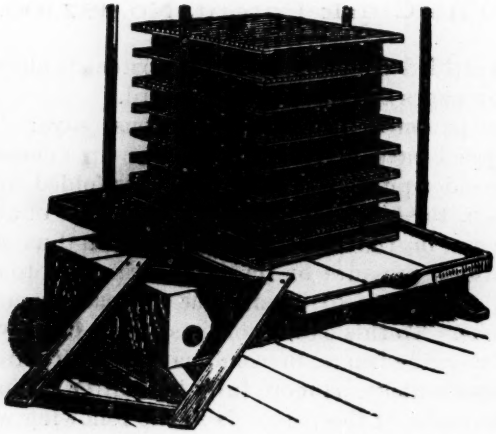
The patentee, in his specifications, says: "The "object I have in view is in laying up a cheese for "the cider press, where each layer is folded up in a "cloth, to secure uniformity of thickness of all the "layers in the mass or cheese, and thus secure "uniform pressure on its entire area, and to avoid "all tendency to break the pomace-frames or "racks. To this end it consists in the employment "of a guide-frame, in combination with extended "pomace-racks, as more fully herinafter set forth."

The claim of the patent is in the following words: "What I claim for my invention is,

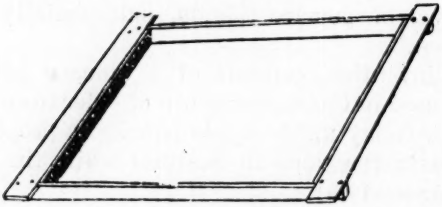
"The guide-frame, D, in combination with an "extended pomace-rack, and a cloth to enclose "a layer of pomace therein, substantially as de-"scribed."

The invention consists of a pomace holder or device used in the manufacture of cider to enable the operator to lay up the apple pomace in proper form, and retain the same in position while the juice is being pressed out.

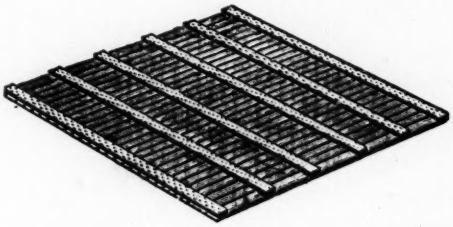
The machine itself is shown by the model, Complainant's Exhibit No. 9, and by the following illustrations:



CHEESE LAID UP BY THE CLARK PATENT.



THE CLARK GUIDE-FRAME.



THE CLARK EXTENDED POMACE-RACK.

The invention consists of the three elements in combination:

FIRST, the guide-frame.

SECOND, the extended pomace-rack.

THIRD, a cloth to envelope a layer of pomace.

The "guide-frame," or "form" (as it is often called) is made of four short boards, nailed together at the ends, to form an open box, having strips of boards or cleats attached to guide against the posts or some parts of the press to keep the guide-frame in each successive layer exactly over where it was in the previous layer.

The "extended pomace-racks" are made by fastening a series of small slats together, so as to leave spaces between them, the whole forming an area greater than the bottom of the guide-frame.

Any suitable cloths large enough to envelope a layer of pomace are used with the guide-frame and extended pomace-racks.

In the manufacture of cider, the apples are first ground to a fine pulp called "pomace." This pomace is then "laid up" in "layers" in a mass or bulk called a "cheese," and subjected to pressure to squeeze out the juice or "cider." A good apple is about four-fifths part juice. Therefore, much of the pomice is liquid or semi-liquid, and a cheese of apple pomace is pressed down to about one-third of its original height.

The "Clark cheese-former," or "pomace-holder," as it has always been called, the invention under discussion, is for the purpose of enabling the operator to "lay up" this "pomace" into a "cheese," in order that the juice may be pressed out.

The invention is used as follows:

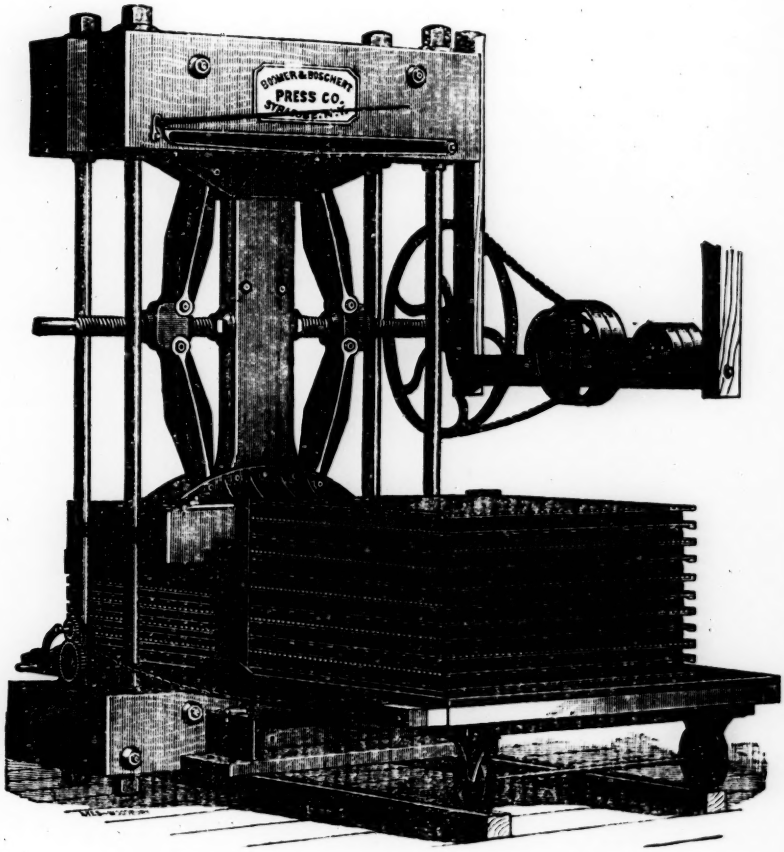
1st. Laying down an extended pomace-rack. 2nd. Placing upon the extended pomace-rack the guide-

frame, so that the sides of the frame do not extend to the edges of the rack on either side; and, also, so that the guiding boards, or cleats, fit against the posts to keep the guide-frame in proper position. 3rd. By placing in the guide-frame the cloth spread out to receive the pomace. 4th. Placing the pomace on the cloth inside the frame, filling the frame with pomace even full. 5th. Folding the edges of the cloth over the top of the pomace, thereby enclosing the layer of pomace in the cloth. 6th. Lifting up the frame off the rack, leaving the layer of pomace thereon. 7th. Laying another extended pomace-rack on the layer already formed. 8th. Placing the guide-frame on this second rack. 9th. Spreading another cloth over the guide-frame as before, filling it with pomace, and so continuing, thereby building up a "cheese" of as many layers as desirable.

The specifications go on to say:

"Laid up in this way, the several layers are uni-
"form in thickness, and the cheese, in mass, is
"level on top, and offers a uniform resistance to
"the pressure over its entire area, thus insuring the
"expression of all the juice, and precluding all
"danger of breaking the pomace-racks."

As is readily seen by the following illustration, showing a cheese before it is pressed down and one after the pressing is mostly completed:



PRESSING THE CHEESE LAID UP BY THE CLARK INVENTION.

The State of the Art.

As disclosed by the evidence in the case, the only way known for many years of laying up cheeses of apple pomace was with straw and a form, or hoop. This form was not unlike the "guide-frame" of the Clark patent, made by nailing four short boards, about four feet long and six inches high, together at the ends in the form of a box, and often called a "frame," and, although square, sometimes called a "hoop" (see pages 213, and 221-222). The only difference of construction of the Clark guide-frame over the old style of form is that the Clark guide-frame has cleats or guide-boards upon it to guide it along the posts of the press, as the cheese is built up, while the old form had no guiding device of any kind. This form was laid upon the platform and long rye straw spread over the entire area of the form with the ends of the straw extending beyond the sides of the form. Then the pomace was placed inside the form, the form being filled even full of pomace and the ends of the straw doubled over and made fast in the pomace. The form was then raised up, the pomace being held in place by the straw, and four sticks laid across the corners of the layer thus formed to support the form which was placed thereon, and straw again spread over and the form filled with pomace as before. In this way a "cheese" of as many "layers" of pomace as desirable was made and the whole subjected to pressure (see record, page 161, and Cider Maker's Manual, page 46). The object of using straw was to hold the mass together while being pressed, and also to serve as a means of exit for the cider.

But this proved a very slow, unclean and expensive way of making cider. There being no guiding divices on the frame or form, the cheeses would be apt to be out of plumb, and so could not be success-

fully pressed unless very skillful workmen built them. This method was altogether unsatisfactory.

CLOTHS.

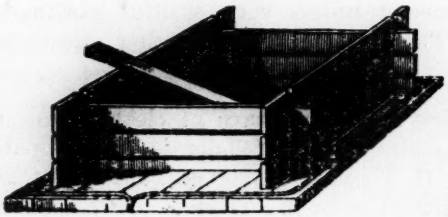
The first record we have of cloths being used in in the manufacture of cider is in the patent of Charles H. Thomas, No. 50,665, dated Oct. 24, 1865 (page 299 of record). Thomas, in this patent, describes a device for laying up cheese with cloths whereby he enveloped each layer of the cheese in cloths, and, as he says in his specification, "gets rid of the use of straw, and thereby keeps a great amount of chaff, dust and dirt from becoming mixed in the juice."

About this time it was attempted to use cloths in various ways in making cider in the place of straw with the "hoop" or "form," as above described.

But pomace cheeses laid up with cloths and with nothing else between the layers never proved successful. There were two disadvantages in this use of the cloths. *First*, the layers being pressed tight down one upon the other left no conduit or space for the cider to run out from the middle of the cheeses, and it would be found that after the pressure was removed that much of the cider would remain in the center of the cheeses. *Second*, the cloths would burst under heavy pressure, so as to be practically useless. For one or both of these reasons almost every one who used cloths went back again to straw, or commenced to use some of the various styles of cribs which began about this time to be introduced into use.

THE CRIB SYSTEM.

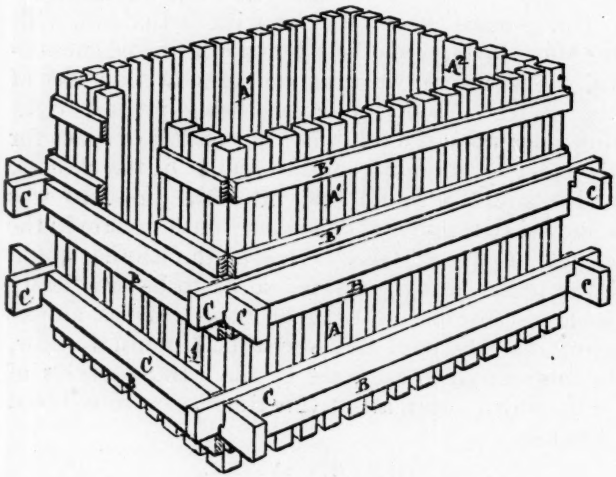
At about the same time with the introduction of the use of cloths in making cider, various styles of cribs began to be used. One of the first of these was the "Log House" Crib.



LOG HOUSE CRIB.

This was made of scantling, or small plank, about two inches thick by four inches wide, and about five feet long, notched at the ends so as to lock at the corners, as shown in the cut. The crib was laid up in this way four or five feet high, as desired.

Then came the "Slat Crib."



SLAT CRIB.

This was also called the "Picket Crib." It consisted of upright slats, or pickets, about one and a

half inches square placed one-quarter of an inch apart, forming the four sides of a crib supported by heavy rails being locked together at the corners. The cheeses were laid up in these cribs by first hanging cloths around the inside of the crib, extending down upon the platform, and then spreading a cloth on the bottom of the platform and placing a layer of pomace some five or six inches deep upon this cloth, then spreading a cloth over this layer and more pomace on that cloth, and so on, putting alternate layers of pomace and cloths until the cheese was built up to the desired height. But these cribs were all defective, for the reason the juice could not be pressed out from the center of the cheeses. There was need of some device by which the cider could be extracted from the center of the cheese. Many cider makers went back to straw, but that was uncleanly, and, as straw became valuable, was very expensive.

In 1869 we have the first record of racks being used between the layers of the cheese for artificial channels to drain the cider from the center. This method was first conceived by J. S. Buell, in 1868, and described by him in his book entitled the "Cider Makers' Manual," at pages 47 to 49. These racks were called by Buell "pomace-frames," and were made of laths, or the like, nailed across each other at right angles, like lattice work, and made the size of the inside of the crib. The method of using these racks is described by Buell as follows (page 48 of the "Cider Makers' Manual):

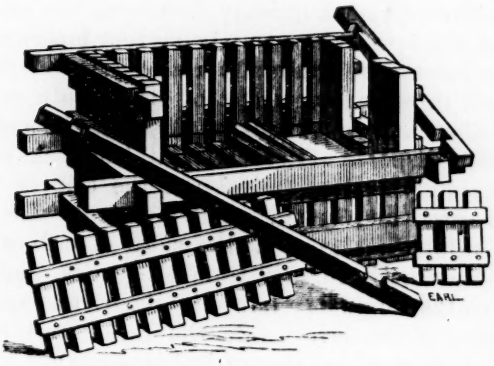
"These frames are designated and known as "'pomace-frames,' and are used in laying up a "cheese as follows: First, place upon the platform "of the press one of these frames, seeing that it "covers the entire inner surface of the crib. Place "upon the top of this frame the cloth, or cloths, at

"at the same time covering the inside of the rack "(meaning 'crib') with one thickness of cloth, lay- "ing the lower ends over the frame, and then fill in "with pomace to the uniform depth of from three "to five inches. Then lay on cloths, and upon the "cloths place another frame, upon which lay other "cloths, and add thereto five inches of pomace, thus "building up successive layers of frames, cloths, "pomace, cloths, frames, cloths, pomace, alternat- "ing in like manner until the curb is filled, and "then proceed as before described. The frames "separate the cloths and allow the free passage of "the cider from all parts of the cheese through and "between them, while the openings between the "slats of the frames act as conduits for the liquid "to the outside receptacle."

When this description was published by Buell this method had not been thoroughly tested and its defects made known, as they afterward were. On page 45 of his Manual, Buell says that the crib of the press "should be a permanent fixture, and securely braced at its sides and ends." Then he goes on to discuss the use of straw in cider making, and the difficulty of extracting the cider from the cheeses even under the heaviest pressure, and on page 47 says that for several years he has used two thicknesses of "gunny" cloths between the layers. Then at the bottom of page 47 he says, that "about the time of closing up cider making" the previous fall he had conceived the idea of using the racks between the layers of the cheese, but, as before remarked, Mr. Buell had not thoroughly tested his invention at the time of writing his Manual or he would have discovered, as he probably afterward did, and as others did, that it had so many defects as to be practically useless for the purposes for which it was intended.

In 1871 Jonathan Holbrook obtained patent No. 117,075 for "Improvement in Cider Presses," which is found on page 301 of the record, and which shows about the same device as described by Buell.

In 1874, John Clark, the patentee named in the patent in suit, obtained letters patent No. 148,038, set out in full at pages 286 and 288 of the record, and shown by the model in evidence, Plaintiff's Exhibit No. 10, which patent is also owned by the complainant in this suit. That patent carries the crib, cloth and rack system to the highest perfection it ever attained, and may be taken as the state of the art at the time of the invention described in the in the patent in suit.



THE CLARK CRIB WITH FLEXIBLE RACKS.

The Clark Crib differs from the other cribs in that it could be taken down and put up in sections, also it had flexible racks instead of stiff racks as before used, and the cheese was laid up so that each layer was completely enveloped in a separate cloth.

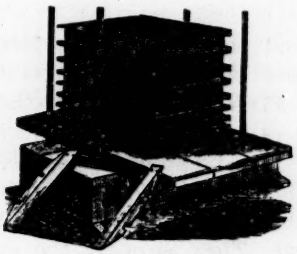
Clark laid his rack on the platform inside the crib, spread the cloth out large enough to fold over the

layer upon the rack, filled in about five inches of pomace, folded the cloth over the layer, laid on another rack, and so built up the cheese.

But all of these devices were defective. None gave general satisfaction or came into general use. To start with, the pressing had to be done inside the cribs. The racks separating the layers had to be inside the crib so as to pass down with the cheese. The layers of the cheese extended to the sides of the crib. Each layer, on being subjected to the pressure, was reduced to about one-fourth of its original thickness. What was the result? *First*, as the cheese descended in the crib the cloths bound and rubbed against the sides of the crib and the friction, under the strain of the moving mass against the stationary sides quickly destroyed the cloths. *Second*, the layers of pomace being four inches thick on the start were gradually reduced to one inch. This left three or four inches of slack cloth at the edges of each layer already against the sides of the crib to be disposed of in some way. The racks could not fit snugly against the sides of the crib or they would catch and break. And invariably the side pressure of the cheese on the sides of crib would move them still further from the racks, and the slack cloths would be retained by the friction against the sides of the crib while the racks were being forced downward by the vertical pressure and would be wrapped over the ends and sides of the rack and cloths above, and so effectually closing up the conduits or channels formed by the racks that the utility of the racks were destroyed, and the majority of the cider makers who had commenced to use this system abandoned it (see pages 163 and 126).

This was the state of the art when John Clark, in 1873, first conceived his present invention, which, as we shall hereafter show, completely revolutionized the cider making world.

He utilized the old form by adding to it a guiding attachment, by which layers could be built of uniform thickness and one exactly above another, without which no pressing of any substance of the consistence of apple pomace could be had. He utilized the old rack by extending it so as to hold up the guide frame while the cheese was being laid up, and so that the extended portions would sustain the slack edges of the layers while being pressed. He did what had never been done before, he made a complete machine for holding apple pomace and forming the cheese, and which, as we shall show, took the place of every other device used for that purpose. By Clark's Pomace Holder the same work was done in one-third the time and at one-fourth the cost by which it was ever done by any other device, before or since.



THE CLARK POMACE HOLDER.

POINTS.

I.

As to Invention.

Never before the invention by Clark had "extended-racks," or "guide-frames," or the combina-

tion of "cloths and racks" with a "guide-frame," or "form" ever been used in the manufacture of cider.

FIRST. *As to extended pomace racks.*

It is nowhere pretended that before the invention by Clark that extended pomace-racks had ever been used. Racks of substantially the same shape and construction had previously been used. But all previous pomace-racks were used inside of a crib. They did not and could not perform the same functions as the extended pomace-rack. With the extended pomace-rack the crib was dispensed with, the cheese built of the same size as before, and when the pressure was applied to the cheese, the extended portions of the racks supported the expanded edges of the layers, and, at the same time, furnished a perfect drainage to the entire cheese, and uniform pressure throughout the entire mass, besides preserving the cloth intact.

The extended pomace-racks perform five separate and distinct functions never performed by any other racks. *First.* They support the edges of the layer of pomace as they are expanded by the pressure of the press. *Second.* They furnish perfect conduits for the cider through the entire mass of the cheese, which, in the Clark invention, cannot become closed. *Third.* They support the guide-frame in the building of the separate layers of the cheese. *Fourth.* They enable the operator to dispense with the crib. *Fifth.* They preserve the cloths.

Mr. Low, testifying on pages 125-126 says, in answer to question 16: "Racks placed inside of cribs do "not perform the same functions that are performed "by the extended racks referred to, for the reason "that they are not used for supporting a guide-"frame while the cheese is being formed, and, as "such racks have to be made smaller than the inner

"dimensions of the crib, so as to facilitate its intro-
"duction into, and remove from the crib, they do
"not support the extreme outer sides of the cheese."

Also, in answer to question 19: "There is a diff-
"erence in the operation when the racks are used in
"such a crib, as the cheese expands by the applied
"pressure the slack cloth around the edges will
"permit the cheese to bulge out into the openings
"between the vertical bars; and then, as the racks
"and cheese move downward under the effect of the
"applied pressure, the cloths are liable to become
"worn and torn; besides this, the slack of the
"enveloping cloths, caused by the reduction in the
"thickness of the cheese, will, by the downward
"movement of the cheeses, be carried into the clear-
"ances between the edges of the racks and the sides
"of the crib, and then, by reason of the cloths being
"doubled in the clearances referred to, these folds
"of cloth will impede the drainage of the cider.
"With the rack extended beyond the edges of the
"cheese these actions are not liable to occur."

Also, see testimony of Mr. Boomer, pages 162-163, question 41.

Where changes of size, form or decree in a device involves change of mode of operation, or a change of result, it is invention.

Winans v. Denmead, 15 How., 341.
Davis v. Palmer, 2 Brock, 310.
Molire v. Haskill, 2 Clif., 510.
Aiken v. Dolan, 3 Fisher, 204.

SECOND. *As to the guide-frame.*

Clark was the first man ever to use a "guide-frame." The old "form" or "hoop" were very similar to the guide-frames introduced by Clark, but there was this distinction: Clark added to the old form a device by which the form or frame could be guided in a vertical course so as to build

each layer exactly over the preceeding one, so that when the pressure should be applied it would be equally distributed throughout the entire mass or cheese. The importance of this is readily seen when we consider the nature of the substance to be pressed. If the cheese was not perfectely plumb and true, when the pressure was applied it would squash out and be impossible to press. Cheeses laid up in cribs were retained by the sides of the crib and were pressed down in the crib. It was considered up to the time of the Clark invention, impossible to build a cheese of many layers up in cloths on a platform without the crib to guide the sides. For if the layers were not all of a uniform thickness, and each layer exactly over the preceeding one, the cheese could not be pressed. To overcome this difficulty Mr. Clark invented the device by which the form could be guided by the posts of the press in a verticle plane, and so as to make each layer exactly over the preceeding one, and called the form with this guiding device a "guide-frame," which name exactly describes it. It is absured to say that the crib is the same thing as the "form" or "guide-frame." The crib is a device to contain a whole cheese of many layers which are pressed inside of the crib without removeing the crib until the pressing is completed, while the form is simply a shallow device for molding or forming each layer of the cheese separately, and as soon as the layer is formed the functions of the form ceases, and the form removed before the pressure is applied.

THIRD. *As to the combination of the "racks' and "cloths" with the "guide-frame:"*

"Racks" had previously been used with "cloths," and "cloths" had been used with a "form," but prior to the invention of Clark, "racks" had never been used in connection with a "form," or a

"guide-frame." And, furthermore, as already seen, neither the "racks" nor the "form" had ever before performed the same functions as they did in the Clark invention.

By the use of this combination the heavy, cumbersome and expensive crib was dispensed with, which, by itself, created a great saving of labor and time. The cheeses were laid up much easier, quicker and cleaner. The edges of the layers were free to expand and were completely contained within the extended-racks, and each individual layer and the entire mass as well was subjected to uniform pressure throughout, and all perfectly drained.

It is the only device which ever became universally used by cider makers. For years cider makers had been endeavoring to devise some means of laying up their pomace cheeses in a simple, cheap and effectual manner. The Clark Pomace Holder more than filled every requirement. It was immediately taken up by cider makers, and manufacturers of cider presses, and in less than two years from the date of the invention hundreds were in use throughout the country. And to-day there is probably not a large cider mill in the country which makes cider for the market in competition with other mills which does not use the Clark Pomace Holder. The only cider mills which do not now use Clark's invention are the small neighborhood custom mills which have no opposition. By the use of Clark's invention the cost of manufacturing the cider — the actual expense of turning the apples into cider — has been reduced from two cents per gallon by any of the old devices to less than one-half cent per gallon by Clark's device.

Mr. Holbrook, a representative of Duffy Cider Co., the largest cider manufacturers in the world, a man of large experience in cider making, and the methods

used by cider makers generally, testified on pages 154–157, that the Clark cheese formers are much to be preferred, and are in general use among cider makers who are using improved machinery.

Mr. T. P. Rogers, a large cider manufacturer and dealer, of New York, testified (pages 157–159) that he used it, and knows of its general use, and that he has influenced manufacturers from whom he bought cider to use it, because he preferred the cider made by that device.

Mr. Harrison, also one of the largest cider manufacturers, of New York, testified (pages 167–171) that he has used it since 1876, that it is the best device for laying up cheeses of pomace he has ever known, that from his acquaintance with cider makers, he believes the Clark Pomace Holder has met with more favor than any other device. That it increased the capacity of his mill more than four fold, from 600 bushels per day, in 1875, by the old method, to 3,500 bushels per day now, by the Clark invention.

Mr. George B. Boomer testified (pages 160 and following) that he has been acquainted with cider making all his life, that he has tried every known system of laying up the cheeses, that he has visited a great many cider mills in this and other countries, that he has been engaged in introducing the Clark Pomace Holders into use, and says (page 164): "I "have put many hundreds of them in use among "cider makers, replacing every other device that I "am acquainted with, and I have never known one "of them to be thrown out after it had been used "long enough for the operator to become familiar "with its operation."

NOTE. — The word "explaining," on page 164, line 11, of the record, is "replacing" in the original record.

Also, the circular of Marcus P. Schenck, of Fulton, Oswego county, N. Y., in evidence, published in 1880 or 1881, while advertising his presses and cider making machinery, and showing and advertising for sale the Log House Crib with his presses, says: "It requires about two hours to press a cheese "thoroughly, and give it time to drain. About "three cheeses a day, with a single press, is the "usual amount pressed when run by power. One-"third more can be done by using Clark's Pomace "Holder." Mr. Schenck assisted largely by money, time and witnesses in the defense of this case in order that he might have the free use of the invention on his presses. His commendation is the forced acknowledgement of an enemy. But there is not one word of evidence in the case which can be construed into an adverse criticism of the usefulness of the Clark invention.

In the face of all this mass of evidence, how can it be said that there was no invention in what Clark did? That "any man of ordinary mechanical ingenuity" or "any practical cider maker," having cloths and racks before him, and wishing to lay up a cheese of pomace, would do "just what the patentee," Clark, did. Practical cider makers had had racks and cloths before them for years, and for years had been endeavoring to lay up pomace cheeses with them, but could never make a success of it until Clark first did it. After Clark had showed them how, then it was very easy, very simple, the only wonder was they had not known how before. They immediately dropped all other devices and used Clark's invention, but now say Clark ought not to have a patent — it does not rise to the dignity of invention — because it is so simple that any one ought to have known how to do it, even if they did not. The very fact of the simplicity

and utility of the invention shows the value of the invention.

Attention is particularly called to the following decisions upon that point:

This court, in the Consolidated Valve Co. v. Crosby Valve Co., 113 U. S., 157; S. C. 5 Sup. Ct. Rep., 513 (Jan. 5, 1885) said, that the fact that the old device was not used, and "the speedy and extensive adoption of" the patented device supported the conclusion of novelty in the latter.

Also, in Hollister v. Benedict, 113 U. S., 59; S. C., 5 Sup. Ct. Rep., 717 (Jan. 5, 1885), that "an increased utility, beyond what had been attained by devices previously in use, in cases of doubt, is usually regarded as determining the question of invention." The same is held in Smith v. The Dental Vulcanite Co., 93 U. S., 495.

Mr. Justice Nixon, in New York Belting & Packing Co. v. Magowan, says, upon this point: "It is "a subject not to be overlooked, and has much "weight, that the product manufactured under it "went at once into such extensive public use as "almost to supercede all packing made under other "methods. Such a fact is frequent evidence of its "novelty, value and usefulness, and accounts for "the defendant's infringement."

27 Fed. Rep., 362 at page 364 (February 18, 1886).

Judge Butler, in Asmus v. Alden, 27 Fed. Rep., 684, at page 687 (decided May 13, 1886), says: "What constitutes invention, in the legal sense, is "difficult of exact definition in terms. Where, "however, an old device or machine in general use, "with acknowledged serious defects, which have "been long endured, because no one has previously "discovered a means of obviating them, is taken in

"hand, and, by changing its form or structure, "they are removed, and a different and improved "result obtained, it may safely be affirmed that the "change required invention. Where the improve- "ment, and consequent public benefit, is great, "very little evidence of invention is required." Citing with approval.

Smith v. Goodyear Co., 93 U. S., 486.
Washington & M. M. Co. v. Haish, 4 Fed. Rep., 907.
Eppinger v. Richey, 14 Blatchford, 307.
Isaac v. Abrams, 141 O., 862.

The same judge, in Hill v. Biddle, 27 Fed. Rep, 560 (April 30, 1886), says: "While it is true that "the utility of a machine, instrument or contrivance, "as shown by the general public demand for it when "made known, is not conclusive evidence of novelty "and invention, it is nevertheless highly persuasive "in that direction, and, in the absence of pretty "conclusive evidence to the contrary, will generally "exercise controlling influence.

Also, see Judge Shipman's opinion in the Celluloid M. Co. v. The American Zylonite Co., 36 O. G., 1043 (July 27, 1886).

Clark did all that is necessary to constitute one an inventor. He invented a new "guide-frame" a new "extended pomace rack" and an entirely new combination of the "racks," "form" and "cloths," which operated in a manner never before known. His invention was new and useful and has been a great benefit to the public. He was clearly entitled to a patent.

II.

As to the Defense of Aggregation.

Each element of the Clark invention co-acts with each other element to produce one unitary result.

To be sure, the guide-frame is taken off before the pressing begins. But the patent is for a "cheese former," not a cider press, and the patent states the object of the invention is the "laying up a cheese," and the cheese is fully formed, or "laid up," before the guide-frame is removed. Nor could the cheese of pomace be formed without the guide-frame or its equivalent. The liquid pomace needs something to keep it in position while the layer is being formed, to determine the size of the layer and to regulate the position of the layers in the cheese, so that each succeeding layer shall be directly over those already formed, otherwise the cheese could not be properly built or successfully pressed. The guide-frame does all this, and, at the same time, rests upon the extended pomace-racks and holds open the cloths. It is not necessary that all the elements of a combination should act at the same time.

Hoffman v. Young, 18 O. G., 794.

But, as a matter of fact, all the elements of the Clark patent do act together simultaneously to produce the one given result, and that is to lay up a cheese for a cider press.

William H. Low, complainant's expert, testified upon this subject as follows (page 125 of the record):

"The combination claimed in patent No. 187,100 is,
"in my opinion, an operative combination, wherein
"there is co-operation of several parts to produce a
"unitary result, and it differs from an aggregation
"of separate elements wherein each element per-

"forms its own function, unchanged and unaffected "by the others."

Also, same page: "The 'extended pomace-rack' "forms a base for holding the 'guide-frame' while "the cheese of pomace is being formed in said "frame, and its extension affords a support to the "outer edges of the cheese, when, by reason of "the applied pressure, the cheese is expanded side-"wise in each direction beyond the size in which it "was moulded by the 'guide-frame'; the 'guide-"frame' holds the 'cloth' in such a manner that "the cheeses will be formed of a uniform size, and "it regulates and determines the position of the "cheese, so that each one in a series of cheeses will "lie directly over another, and thereby produce an "equal distribution of pressure when the mass is "subjected to the action of the cider press; and the "enveloping cloth is dependent upon the 'guide-"frame' and rack to sustain it while being filled "with the pomace, and upon the extended portion "of the rack to maintain it in an uninjured con-"dition while it is being expanded sidewise by the "applied pressure; and it further depends upon "the rack to effect a more perfect drainage for the "cider after it oozes out through the pores of the "cloth."

Thus it is clearly seen that each element depends upon each of the others, and all together work out the one result of "laying up a cheese for the cider "press, where each layer is folded up in a cloth to "secure uniformity of thickness of all the layers in "the mass, or cheese, and thus secure uniform pres-"sure on its entire area, and to avoid all tendency "to break the pomace 'frames or racks.'" None of the elements could perform the same functions without the aid of each of the others, and if any one of the elements were omitted, the others

could not perform the same functions, but each element depends upon and modifies the action of each other element, and all unite together in producing the one result. And we respectfully insist that the learned judge erred, both in his statements of the law and in his application of the law to the facts of the case, when he says (page 16), "the combination must be new; so must the result." Also, on the same page: "It is not quite easy to perceive "how the use of the guide-frame causes any co-ac- "tion or combination between it and the racks and "cloths. No new result is produced by its use; "the press operates in the old way; the cheese is "pressed down and the juice forced out as before. "To what that is new or useful does the guide- "frame contribute in connection with the other de- "vices? In other words, suppose this patentee to "be the first inventor of racks and cloths, could he "be deprived of the benefits of his discovery in its "simplest and most practical form by another per- "son who should obtain a patent for such a combi- "nation as is described in the specification?" Also, on page 17: "To constitute a valid combination "there must be a new result produced by the com- "bined action of all the component parts. What is "that result in this case? It may, perhaps, be ad- "mitted that the guide-frame operates more con- "veniently than the old devices, but something "more than this is necessary to sustain a patent for "a combination." We submit that a new means of producing an old result is patentable.

O'Reilly v. Morse, 15 How., 62.

Furthermore, the guide-frame co-acts with the racks and cloths to produce the one result in this case. It would not be possible to lay up such a cheese as described in the patent without the guide-

frame, or its equivalent. The object of the invention is to lay up a cheese, not to press out the juice.

The different elements in the combination are new, the combination is new, part could not be used without the rest, the result could not be produced without the use of all, all co-act to produce the one result. None of the elements except the cloths ever performed the same functions in any other combination as in the Clark invention. Therefore we insist that the combination claimed in the patent is a patentable combination, and not a mere aggregation of parts.

III.

As to the Defense of Prior Use.

The defendant, evidently proceeding upon the idea that many allegations of prior use were equivalent to at least one actual, bona fide, proven case, has set forth in his answer, and the amendment thereto, (pages 10 and 233) at least twenty-eight specific instances of the alleged use of the patented invention for more than two years prior the date of the application for the patent occuring in as many as six different States. Also, the names of numerous witnesses having knowledge of such alleged prior use. This shows a most thorough and extensive investigation on the part of the defense. The trial of the case extended from September 17th, 1881, until March 1883, giving the defense ample time to produce this proof as to the alleged prior use. But upon sifting the testimony down to what is actually sworn to, there are two, and only two, of the alleged instances of prior use which have one word of proof to substantiate the allegation. These two cases are George

Casper, of Bramanville, near Howe's Cave, Schoharie County, N. Y., and George C. Valentine, of Charlton, Saratoga Co., N. Y., which cases we will discuss separately. But before entering upon such discussion we would call attention to the fact that the testimony in support of such allegations of prior use was given in 1882, and the date of the application was Sept. 11th, 1876, also, that the cider-making season only lasts two or three months of each year, and in the cases of Casper and Valentine, cider making was only carried on as an adjunct to their regular farming business. Therefore, it must be impossible for casual observers to say positively that a farmer used a certain device twelve years ago or even eight years ago in cider-making, and it would be next to an impossibility for such a casual observer to describe the device. And when a man, testifying to casual observations made so far back, relies entirely upon his memory, his testimony should be received with due allowance for the unreliability of unsupported memory. The lapse of time, the small part of the year in which cider making is carried on, the comparatively private use of the apparatus, the fact that only one or two men are usually employed at any season in its use, are considerations to be taken into account in weighing the testimony of defendant's witnesses as to any alleged prior use of the patented improvement. We will first examine the alleged prior use by George Casper.

CASPER'S ALLEGED PRIOR USE.

Casper testified, (in answer to questions 7, 10, 42, 74, pages, 191-200) that in November, 1873, near the close of the cider-making season of the year, he made a few racks, and first commenced to use the

Clark invention. The Clark Pomace Holder, is often referred to by the words, "racks, cloths and forms," as in Q. 7 of Casper's deposition. Bearing in mind the date of the application for Clark's patent, September 11, 1876, it will be seen that Casper fixes the time of his commencing to use this combination just early enough to bring his alleged use more than two years prior to the date of the application. He kept no books by which to fix the time when he commenced to use it (answers 28, 44, 45), but swears entirely from memory (answers 44, 45, 46), having but two things to assist in fixing the date: First, because he commenced to make cider in 1872, and remembers that he commenced using the Clark invention a little at the close of the second season. He used a crib to some extent, straw to some extent, cloths and a form some, without racks, then put loose slats between the layers; he used all of these systems before he began to use racks, all of the first season and all of the second, except at the very close. Now he testifies entirely from memory as to what happened ten years before, and it is not reasonable that he could remember, using other methods for nearly two seasons, and be absolutely sure that he commenced using the Clark system at the close of the second season, rather than at the close of the third. But in answer to question 45 he says he has another help to aid him in fixing the date — he remembers the date from the men who worked for him. This evidently is of doubtful assistance, when different men worked the same year at different work and the same men worked for him different years. But he names the men who worked for him during these years (ans. 31), and states that one in particular, Daniel Stevens, worked for him in 1873 and 1874. And on the second day of Mr. Casper's examination, after he had been home over night, and had

had time to look the matter up and reflect upon it and become sure, he corrects the list of men who had worked for him, and in answer to question 107 he again names Daniel Stevens as the man who helped him make cider in 1873 and 1874. In answer to question 32 he says that Stevens worked for him the whole of the year 1873, and he helped make cider the entire fall of 1873, except four or five days; and that Stevens was present and assisted when he first used a few racks at the close of the season.

Daniel Stevens (page 200) is then called to corroborate Casper. This he does with the greatest minuteness. He swears that he commenced to work for Casper in the Spring of 1873 (answer 6). He tells what he did during the different seasons of the year (answers 7, 8 and 9), that he helped make cider, during the entire cider-making season of 1873 (answers 41 to 67), except four or five days; that he went to Catskill during those four or five days to work in a stone quarry, but he could tell nothing definite about this Catskill trip upon which we could fasten to find out anything in regard to its truth or falsity, or when it really was (answers 60 to 70). He further states that this was in November, 1873, and when he returned from Catskill he again assisted Casper in making cider, and that Casper had four racks which were used in a few cheeses the last of that season, closing the manufacture of cider early in December, 1873 (answers 70 to 79). Stevens testifies to all this wholly from memory. He further states that for the two years previous to his working for Casper he had worked for Eli Rose, of Howe's Cave.

Eli Rose, called as a witness for the complainant (pages 111, 112), testified that he is the manager of the Howe's Cave Lime and Cement Company; that he knows Daniel Stevens; that Stevens has worked

for him many different years, and was at that time (1882) working for him. Mr. Rose further testified, that he keeps a time book of the men who work for him, that he sets each man's time down each day he works, and the number of days is footed up at the end of the month. Mr. Rose produced the books containing the entries made during the years 1872, 1873 and 1874. And from those books swears that Daniel Stevens worked for him during the whole year of 1873, except the month of September, and especially in the month of November, 1873, Stevens worked for Rose 21 days, and in the month of December, 1873, he worked for Rose 29 1-2 days. These are the very periods in which Casper and Stevens say they were using the racks in Casper's mill, except the four or five days in November when Stevens was at Catskill.

Mr. Rose is a disinterested witness, while Casper is as much interested as the defendant, Ferguson, himself in the result of the suit (see ques. and ans. 83 of Francis L. Casper, page 231). Mr. Rose made these entries himself at the times in dispute, nine years before the time of giving the testimony, and no effort has been made by the defense to rebut it. Mr. Rose was examined September 8th, 1882, and the case not closed until March, 1883, giving the defense six month's time to investigate the matter and contradict Mr. Rose if they could. Stevens was still at work for Mr. Rose, and all were living in Casper's neighborhood, if Stevens had worked for Casper in 1873 or had gone to Catskill that fall it could have been easily shown by them.

Steven's statement that he worked for Casper when the Clark invention was first put in Casper's mill, and that it was late in the fall, as both he and Casper state, when the racks were first used there may be true, but on reckoning up where he had

worked for ten or twelve years back, and remembering that he had worked for Rose two seasons before he worked for Casper, Stevens was made to believe that he had worked for Rose in 1871 and 1872, and for Casper in 1873, while in fact, as Rose proved by his book, he worked for Rose in 1872 and 1873, but not in 1874, and therefore we are led to the conclusion that Stevens did work for Casper in 1874, and it must have been in the latter part of 1874, in November, or December, that they commenced to use the Clark Pomace Holder at Casper's.

In this theory we are strongly corroborated by one of defendant's own witnesses, Francis L. Casper, son of George Casper. George Casper previously testified that his son, Francis L., assisted in making cider during those years. Francis L. Casper swears to the same thing, as to his helping make cider, but he also swears that racks, form and cloths were not used in his father's mill until some time in 1874 (ans. 42, 43, pages 228 and 11, page 226). At what time in the fall of 1874, he could not state, but the testimony of his father and Stevens places that point beyond dispute, that it was the latter part of November or in December, 1874.

Francis L. Casper, stated that it was a gradual progress, extending over considerable time, in his father's mill (see answer 55, page 229). First, using straw and a crib, and during the second season using cloths and a form, and then, near the close of the second season, laying a few loose slats between each layer, and then from this gradully increasing the number of slats used, until some time during the fall of 1874, these slats were finally nailed together and made into a rack. In answer to questions 38 to 44, he says straw was used until October, 1873, and loose slats were first used in November, 1873, and racks in the fall of 1874. This contradicts the testi-

mony of George Casper, Daniel Stevens, and John L. Carey. This evidence proves beyond a reasonable doubt that Casper did not use the Clark pomace-holder in 1873.

But, furthermore, Casper stated that when notified by complainant to discontinue the use of the patented improvement, or to pay a license fee therefor, he consulted Mr. Kromer, a neighbor educated as a lawyer (answers 122, 123, pages 200 and 298), and stated to him how long he had used the machine, and that Mr. Kromer told him he could not get rid of paying the license fee. Therefore he wrote that he would settle on a day named, but before that day came, he was advised differently by Mr. King, and so did not pay.

Mr. Kromer, called as a witness, says that Casper told him that racks and cloths were first used in his mill in 1874 (answer 20, page 114). Thereupon, Mr. Kromer told Casper that he was undoubtedly liable for infringement of the patent. This version of the interview is probably true, for if Casper had told Kromer that he commenced to use the device in 1873, and application for a patent was not made until 1876, Kromer would have told him he was not liable. What Mr. Casper afterward told Mr. King is not explained.

James Stoner shows by his own testimony that it must have been 1874 or 1875 when Casper used Clark's invention. He says that he worked for Casper when Stevens did, but we have already shown that Stevens did not work for Casper before 1874, and that the first use of the device by Casper and Stevens was late in the season. Therefore, if Stoner saw the device used in August, as he says, he must have seen it used in August, 1875. Stoner further says that it was 1874 when Stevens went to Catskill for a few days, which corroberates our theory of the case.

John L. Cary gives his history of the gradual development of devices employed by Casper, but makes the entire process of development occupy only about two months, from October 20, to December 1, 1872, while Francis L. Casper extended it over nearly three years. Cary is entirely at sea in regard to the dates. He seems to have made up his mind that he was right, and then swears to his theory with the greatest persistency. Cary goes so far as to swear that Casper used loose slats between the layers of pomace in 1872, and nailed them together the latter part of the year (answers 16 to 20, page 262), and that in 1873, during the entire season, Casper used racks and cloths, with a guide-frame all complete, as shown by the Casper model. This is simply absurd. Both of the Caspers and Stevens contradict it. We are forced to the opinion that either this man's memory or else his honesty is at fault. He further says he is testifying "as per diary." But it turns out that the only entry in his dairy is the isolated circumstance that he bought some cider of Casper, and there is not a word in the diary as to "racks," "cloths" and "form," or as to what Casper did or did not use. Also, he swears very minutely as to what Casper used and as to various parts of the press, but strangely enough he never saw the pulleys testified to by Selkirk (answer 16, page 214), by Daniel Stevens (ans. 12 and 13, page 201), also by George Casper and Francis L. Casper, and which appear to have constituted an important element in Casper's cider mills. Cary's testimony is wholly unreliable.

In brief: 1st. Defendant attempts to show by George Casper's testimony that Casper commenced to use the Clark invention, with the assistance of Daniel Stevens and Francis L. Casper, in November, 1873. Daniel Stevens attempts to corroborate Casper, and swears the same as Casper does, but we prove

by incontrovertible evidence that Stevens was not at Casper's mill in November, 1873, but was working for Eli Rose. And Francis L. Casper swears that the Clark device was not used until 1874.

2nd. Defendant attempts to support Casper by the evidence of John Cary and James Stoner, but they are flatly contradicted by Francis L. Casper, and also by the time book of Eli Rose.

3rd. George Casper admitted to Kromer, under circumstances which render it probable that he told Kromer the truth, that he did not use the racks and and cloths until 1874.

The burden of proof is not sustained by the defense.

VALENTINE'S ALLEGED PRIOR USE.

The other alleged case of prior use which is deserving of any notice is that of George C. Valentine, of Charlton, Saratoga County, N. Y.

Mr. Valentine says that he used racks and cloths with loose slats in 1869, and that in 1870 he used the complete pomace-holder composed of racks, cloths and guide frame, the same as described in the Clark patent (pages 235, 242).

He swears very positively, but confines everything to his own personality. He made his own slats, his own racks, his own guide-frame, and even sawed out the material himself (page 240). He leaves no ear marks by which to verify his statements. He even says he cannot remember the name of a single man who worked for him in making cider up to and including the year 1874, although he swears there were a great many different ones at work for him during this time (pages 242, 243, answers 144 to 146). In every way he carefully conceals, either by accident or design, every clue which might enable com-

plaint to test his statement, but by some strange fatality he speaks of two circumstances connected with outside affairs, each of which, though small in itself, opens the door by which we are able to prove a lack of good faith on his part, or else a very unreliable memory.

FIRST. He testified that he at first used the crib system with straw, as it had previously been used by his father, up to and including a part of the year 1869, that late in the year 1869 he did away with the crib and commenced using cloths and a form, with loose slats between the layers of pomace (pages 239, 240). It is not probable that he would make so complete and radical a change during the progress of the season without having seen something like it to give him the idea. Therefore, in answer to question 103, page 240, and following questions, he states that he first got the idea of using cloths, etc., from a Mr. Tobey, of Glenville, Schenectady County, N. Y., and that he never saw cloths used in making cider in any other mill previously to seeing them in Tobey's mill. He farther stated that in 1869 he was in Tobey's mill and saw Tobey laying up his cheese in cloths, with a form or hoop, but without any racks or loose slats, or anything between the layers (as described in the Thomas Patent, page 299). Valentine further says, that seeing these in Tobey's mill, he went home and immediately introduced cloths in his mill, with loose slats between the layers for a few cheeses, and then the next fall he commenced to use the racks, cloths and guide-frame.

Now, upon this statement it is quite evident that if Tobey did not use cloths until 1874 that Valentine did not use them until after that. It may also be assumed that after Tobey once commenced to use cloths he continued to do so, especially as there is no evidence to the contrary. If there was any doubt on

this point, it would have been shown by the defense. It is shown that Tobey moved away from Glenville in 1877 and died in the year 1880 (page 97), and four witnesses are call to show when Tobey first used cloths.

George Reynolds swears (page 88) that in 1871, he was in Tobey's mill and saw a cheese laid up with straw.

William Lawsing testified (page 95) that for a number of years, when a youngman, he lived nearTobey's mill, and was acquainted with Tobey, and was in his mill nearly every day when he was making cider; that he worked for Tobey in 1875 and never knew cloths to be used until that season; that they used cribs the fore part of the season, and, not liking the crib, Tobey got cloths, and they commenced to use cloths. Prior to this, from 1869 to 1874 Tobey had used straw (page 98).

Ormie DeGraff (page 107), also a young man, testified that he knew Tobey well, was in his cider mill every season he made cider at Glenville, and worked for him in 1875 or 1876, and that he used cloths for the first time (pages 108, 109); that Tobey used straw in the old mill, and commenced to use cloths in 1875 or thereabout. Lawsing and DeGraff were young men at this time, and were often in and out of Tobey's mill.

William Carroll (page 101) testified that he knew Tobey well and worked for him more or less every year he made cider in Glenville, from 1867 to 1876; that Tobey used straw at first, and toward the last, about 1874, Tobey commenced using cloths; that he first made cider in the old mill, and that in 1872 he built a new mill; that he did not use cloths until some time after he moved in the new mill (page 102).

All of these witnesses were cross-examined about the old mill, and swear that cloths were not used in

the old mill to their knowledge, although they are all perfectly familiar with the old mill. These witnesses prove beyond a reasonable doubt that Tobey did not use cloths before 1874. Therefore, if Valentine got the idea of cloths from Tobey, as he testifies, he could not have used cloths and racks prior to September 11, 1874.

Furthermore, Valentine testified that he experimented with slats and cloths a year or so before he got the racks completed. Edward Merchant testifies to the same effect, and Benjamin H. Knapp (pages 135-136), testified that Valentine told him that he had experimented two or three years with loose slats before he perfected the racks. This fact, under any theory of the case, would put the time of Valentine's use of the Clark invention subsequent to September 11, 1874.

SECONDLY. George C. Valentine went outside of his own personality in one other matter material to the issue. When asked how he fixed the date 1869 as the year when he first used cloths and slats, he answered because that was the year a part of his farm was sold under mortgage foreclosure, and that the Hon. George G. Scott, of Ballston Spa., was the referee who sold the property (questions 163 to 170, pages 243-244). Judge Scott, called as a witness (page 85) proves that there were two mortgage sales of farm property at Charlton in which George C. Valentine was interested — one in 1869 and one in 1874; that he (George G. Scott) was not referee in the sale of 1869, but he was the referee in the sale of 1874, which fact of Valentine's connecting the circumstance of Scott selling as referee with his using racks and cloths proves that he did not use racks and cloths before 1874.

So much for Valentine's personal testimony. We will now consider that of the witnesses brought to

corroborate his story. These witnesses are Gideon L. Valentine, John Chambers, Andrew F. Van Vorst and Edward Merchant.

Gideon L. Valentine is a cousin of George C. Valentine. He says he always knew what was going on in George C. Valentine's mill, who was working there, and what was being used. But he could give the name of only one man, Abram Whitbeck, who worked there during any of these years, but we find on investigation that Whitbeck is dead.

John Chambers is a neighboring cider maker. He says he had previously always used straw, but in 1872 he saw a cheese laid up with racks and cloths in Valentine's mill and immediately, that fall, experimented with them on his own press for two cheeses, but not liking them, then commenced using a crib with racks and cloths inside the crib, and that he has always since used that system. But Benjamin H. Knapp shows (pages 136, 142, 143, 146) that Chambers used straw as late, at least, as the fore part of the season of 1874, till near election time (November).

This witness, Chambers, described minutely how George C. Valentine used the racks, cloths and form at that time, but admits that he did not see them used.

Edward Merchant testified that he was in Valentine's mill many times each year from about 1871, or 1872, up to 1880, and saw Valentine make cider, and what he used, and knew all about it. He thinks it was 1871 or 1872 when Valentine first commenced to use racks and cloths, and he attempts to describe how they were used in 1872, but is not able to describe their use correctly. He says, in answer to questions 8, 41, 44, that he was in Valentine's mill every year from 1869 to 1881, inclusive, except the year 1880, and saw him lay up cheeses with racks, cloths and

form during the years 1876, 1877, 1878 and 1879, and still he could give no better description of their use during these latter years than he could from memory of their use during the years 1871 or 1872. This is absurd. The fact is that all of these witnesses have seen the thing used each year since, probably about 1876, they rely entirely upon their unaided memory, and they describe what they have lately seen used as though they had seen it used in 1872. They are personal friends and relatives of George C. Valentine, and know he has used racks and cloths for some years, and could be easily mistaken or mislead in regard to the exact date.

Gideon L. Valentine, in answer to questions 18 and 19, and John Chambers, in answer to questions 15 and 16, both swore very positively that in the year 1872, and following, it was a common report among the neighbors of George C. Valentine that he was using racks, cloths and form, and that his cider was greatly improved thereby. In a commmunity of farmers such a radical improvement as the introduction of the Clark invention would be talked of. But now, what are the facts about the rumors and reports of Valentine using this improvement?

Oscar Alexander testified (page 79), that he helped Valentine make cider in 1869 for three days; that he then used straw, and no form or cloths; that he resided within half a mile of Valentine in 1872; that in 1873 he worked for Martin H. Smith in making cider, within about two miles of Valentine's; that in 1872 he was in Valentine's mill at different times, and probably in 1873; that he never saw any racks and cloths used in Valentine's mill during any of those years, and never heard any rumor or report that Valentine was using racks and cloths, or any new improvement.

Martin H. Smith testified (pages 83, 84), that from

1869 to 1874, inclusive, he was engaged in manufacturing cider at Charlton, within about two miles of George C. Valentine's mill, and that he has no recollection of hearing, during that time, of Valentine's using any racks and cloths or any new improvement, or anything different from other cider makers. Mr. Smith is a personal friend of Valentine, and was so at that time, and if there had been any rumor or report as to Valentine's using racks and cloths he would doubtless have heard of it.

Nicholas Swart testified (page 87) that he lived about one mile from Valentine during the years 1872 and 1873, and was acquainted with Valentine; that he had apples to be made into cider; that he did not hear any rumor or report that Valentine used racks and cloths in his mill, or anything different from other cider makers during these years.

Jonathan Harvey reveals the falsity of the defense in his testimony on pages 90, 91. During the years 1869, 1870, 1871, he was frequently in Valentine's, and during these years Valentine was not using racks, cloths and form, but was using his old crib in making cider, and hung cloths around the insides of the crib. Harvey cannot be mistaken as to dates, because the years 1869, 1870 and 1871 were the only years he lived in that neighborhood and the only years he knew anything about Valentine and so could not have confused the dates.

Valentine's witnesses may have got the cloths used in connection with cribs confused in their minds with the cloths used with the racks, and have been thus mislead and drawn into testifying as they did.

Peter Brewster, a hotel keeper at Charlton, testified (page 117) that his hotel is about one and a half miles from Valentine's place; that he moved there in 1870; that he heard no rumor or report of Valentine's using racks in 1872 or 1873, but in 1874

and 1875 he did hear consiberable talk of that kind in his bar-room,and it was talked of as a new thing, a new improvement just introduced by Valentine. Brewster moved into the hotel in 1870, so he could not mistake the date.

Isaac Gravesteen lived within three-fourths of a mile of Valentine in 1872, 1873 and 1874. He never heard of Valentine using racks, cloths and form in 1872 or 1873, but late in 1874 he did hear of it as a new improvement put in by Valentine. Heard it talked about at the country store as something new (pages 118, 119).

Benjamin H. Knapp heard no such report in 1871, 1872 or 1873. Mr. Knapp was employed by the complainant to investigate this matter to ascertain whether or not Valentine did use the device at the time stated. The difficulties of finding direct evidence are best shown by his own testimony, and as drawn out on cross examination. The most ready way and almost the only way to learn anything definite about such a thing is to find the men who assisted in its use or helped use whatever was used. But Valentine would not give the names of any one who worked for him, and the one person, Abram Whitbeck, named by Gideon L. Valentine, is dead. And by a strange fatility, all the persons we could discover who worked for Valentine about this time, and who would probably know something definite, are dead — Van Vranken, Whitbeck, Van Vorst, Rooney and Reilly (see page 137), and most of the near neighbors have moved away (see pages 141, 142 and 143).

Mr. Knapp relates, on cross-examination, what different persons tell him as to the time when Valentine commenced to use racks, cloths and form, and in nearly every instance they say they think it was 1875 or 1876, but if called as witnesses their evidence

would be but the repetition of the evidence already in. This testimony of Mr. Knapp's, although, perhaps, not competent evidence on direct examination, still as brough out on cross-examination is very useful in showing the true state of affairs. And if it were not true it would have been long ago contradicted.

To recapitulated the testimony as to prior use by Valentine:

FIRST. Valentine says he got the idea of laying up cheeses in cloths from Edward Tobey in 1869, but we prove by four uncontradicted witnesses that Tobey never used cloths in making cider before 1874.

SECOND. Valentine fixes the date 1869 by an event which we show did not take place until 1874.

THIRD. Valentine's two principal witnesses swear positively that in 1872 there was a rumor or report among the neighbors of George C. Valentine that he was using racks and cloths in making cider, but we show by an overwhelming preponderance of evidence that there was no such rumor in 1872 or 1873, but there was such a report in 1874, or 1875, and it was then talked of as a new thing. This is shown by Martin H. Smith, a neighboring cider maker; Nicholas Swarts, a near farmer with apples to be made into cider; Peter Brewster, a neighboring country hotel keeper who heard the neighborhood reports talked over in his hotel; Oscar Gravesteen, a near neighbor; Oscar Alexander, who worked in a neighboring cider mill in 1873, and by Benjamin H. Knapp — making six in all.

FOURTH. It is shown by the positive testimony of Jonathan Harvey and Oscar Alexander that Valentine did not use racks and cloths and a form in 1869, 1870, 1871 or 1872.

FIFTH. Benjamin H. Knapp shows that John Chambers, who swore that he saw the Clark inven-

tion in Valentine's mill in 1871 or 1872, and that he commenced using cloths himself in 1872, did not, in fact, commence to use cloths himself until, at least, late in 1874. Showing he is mistaken as to himself, and, therefore, must also be mistaken as to Valentine.

SIXTH. By Benjamin H. Knapp, that many persons told him that neither Valentine nor Chambers used racks and cloths until late in 1874, or in 1875.

All this testimony, standing, as it does, uncontradicted, shows by a preponderance of evidence that George C. Valentine did not use racks, cloths and a guide-frame before September 11, 1874. It may be also worthy of remark that the defendants have not produced the apparatus, or any part of it, which these witnesses, Casper, Stevens and Valentine, swear they used, nor has he or his witnesses accounted for the failure to produce it and put it in evidence before the court. Nor has Valentine even produced any model of what he claims was an anticipating device.

But the question may be asked, how does it happen that Casper and Valentine and others came to adopt the device described in the Clark patent so near the date of the application for the patent? That question is easily answered. The defense, on the cross-examination of Mr. Boomer, sought to prove that the invention had been described in a printed publication more than two years prior to date of application for the patent by putting in evidence a paper or circular, entitled the "Boomer and Boschert Press," and dated September, 1874, which paper contains a description of the Clark invention. This paper is shown not to have been published until the 15th or 22nd of September, 1874, and the device not to have been on sale, or in public use, until a considerable time after that.

Mr. Boomer states that he was engaged in manufacturing and selling presses, and when he became acquainted with the Clark invention he immediately recognized its merits (ans. 99, page 44), and wrote the article in question, describing the invention and recommending its use, wholly unauthorized and unbeknown to Mr. Clark. That about 20,000 of these papers were printed and distributed at fairs, and mailed to cider makers throughout the country (page 160). Mr. Boomer further states that he has on his books about 2,000 names of cider makers in New Nork State, alone, and a general record of the appliances used in their business (pages 166, 167). To these persons the Boomer & Boschert Press Company's circulars were sent. Mr. Casper admits receiving circulars from the Boomer & Boschert Press Company in different years, but he cannot state what years (ques. 115), as do other witnesses. Ferguson says he has received these circulars yearly since 1876 (see ans. to ques. 91, page 181). Now it is probable that Casper, Valentine, and others, received these papers in the fall of 1874, and adopted the suggestions therein made as to laying up the cheese with racks, cloths and guide-frame, and used them for the first time after getting the information from that circular. Then having used them for eight years, from 1874 to 1882 (the year of their giving their testimony), and relying solely upon their memory, they are easily made to believe that they used them longer. Furthermore, attention is called to the fact that defendant's counsel insists that the "crib" and "form" are interchangeable terms, and has so used them in wording his questions and endeavored to have witnesses so understand and treat them (see ques. 57, page 229), and has thus caused much confusion, both in his examination of witnesses by leading questions and his general statement of facts and arguments.

There are numerous inconsistencies in the case which show the bad faith of the defense. Ferguson alleges in his answer (page 11), that

"During the year 1870, one N. Griffies, of Schenectady, Schenectady County, New York, made a cider press containing the pretended invention and improvement of said Clark mentioned in said complaint, and for which it is alleged that said Clark obtained a patent and used the same continuously until the year 1874, when this defendant, on or about November 24, 1874, purchased a cider press from said Griffies, which press, at the time of said purchase, contained the said pretended invention and improvement of said Clark, and this defendant has, since the year 1874, continuously used the said press, and this defendant supposes that the using of said press, so purchased by him, as aforesaid, in 1874, is an infringement of the alleged rights of said complainant as alleged in its complaint."

But upon oral examination Ferguson admits that the press purchased of Griffies did not contain the Clark device, but was an old crib, and that he (Ferguson) did not use the Clark device until 1875. Now Ferguson knew this answer was false when he swore to it as well as when he came to be examined, but on his examination he admits that he did not use device described in the patent until 1875.

Also, in his direct examination (page 175), he details a conversation which he swears he had with Mr. Boomer in relation to this patent in 1876, at 15 Park Row, New York City. He swears that this conversation took place before the patent was issued (answer 21 to 24); he swears on cross-examination that it is impossible for him to be mistaken about it (answer 66 page 179), that he was at the centennial exposition at Philadelphia, Pa., and on his return

he had this conversation with Mr. Boomer, that it was on Monday before election. He testifies to all this with as much assurance and particularity and show of truth as any witness in the case testified to the prior use of the device. But when hard pressed on cross-examination (answer 65 to 70), and probably feeling that we had absolute proof to the contrary, he looks at his diary and says it is all wrong, all a mistake, that he would not have known it if he had not looked at his diary, that the conversation took place in the fall of 1880 instead of 1876.

Now the defendant, Ferguson, an interested witness, testifying in 1882, to what took place in 1880, swears that it took place in 1876. And all this when he had an entry of the circumstances in his diary. If, then, he made an honest mistake, swearing in 1882 to what took place in 1880, as taking place in 1876, how much more easy it was for the other witness to swear that certain things took place in 1872 and 1873, when, in truth, they took place in 1874 and 1875, or even later? But if, on the other hand, Ferguson was wilfully swearing to what he knew to be false, he should receive no favor from this court.

It is not poor, innocent farmer Ferguson that complainant has been obliged to fight in this case, but it is a powerful association, organized expressly to defend this suit, representing more than a million of dollars. It is shown by the last part of the testimony of Francis L. Casper (page 231), that there is in existence an association, having for its object the breaking down of the patent, under which this suit is brought, showing that Casper, Valentine and other witnesses in the case are infringers, and are as much interested in the result as Ferguson himself.

The attempted proofs of such prior use by defendant's witnesses, and the circumstances attending the attempt, make this case one of close resemblance to

that of Washburn & Moen Mfg., Co. vs. Haish, 19 Off. Gaz., 173. The court said, in that case (page 174, 1st colum): "That this proof, which is almost "wholly made up of the recollection of witnesses "revived after the lapse of many years and con- "tradicted, as it is in most instances, by the explicit "testimony of other equally creditable witnesses, "leaves so much doubt as to the actual existence of "the various barbed wire fences, or any of them, as "to make it at least unsafe ground on which to de- "feat a patent. Where prior use is one of the "defenses, and there is much contradiction, the "patent will not be disturbed.

Greene vs French, II Fed. Rep. 592.
Hayden vs. Suffolk Co. 4 Fisher Pat. cases 87.

Sprague, Justice, says: "If the question of prior "use is left in doubt, then the defendant has not "maintained the burden of proof."

IV.

As to the Defense that Clark Abandoned His Invention to the Public.

There is not a word of evidence in the whole case to show that Clark ever abandoned his invention, or dedicated it to the public.

The proof upon this point is as follows: John Clark, the patentee, was engaged in the fall of 1873 in the business of manufacturing cider at Pontiac, Michigan. The Boomer & Boschert Press Co., of which Mr. Boomer was president, was engaged in the business of manufacturing cider presses at Syracuse, N. Y. Mr. Clark first conceived his invention during the fall of 1873 (page 75), and made

a few racks to experiment with. In the summer of 1874 he showed Mr. Boomer a model of his invention at Syracuse (page 71, ans. 43-45). Mr. Boomer immediately saw the advantage of Clark's invention, and had some racks and a guide-frame and cloths made, and bought apples enough to lay up a cheese and tested the invention (page 44, ans. 99, 106-113).

Afterwards, at the State fair at Saganaw, Michigan, which opened during the week commencing September 15th or 22nd, 1874, the Clark Pomace Holder was first introduced to the public and offered for sale (pages 44, 73 and 76). Mr. Clark testified (ans. 4, page 69) that he never sold or permitted others to sell, or put his invention into public use, or permitted or authorized others to do so, before September 11, 1874. On cross-examination (page 73), he says that it was after the Michigan State fair of 1874 that his device was first made or used, or offered for sale. That fair began either September 15 or 22, 1874 (ans. 20, 22, page 70; see, also, page 172).

Mr. Clark says in June, 1874, he showed Mr. Boomer a model of his invention (ans. 44, 46, page 71). He next saw Mr. Boomer at the State fair, in Michigan, in the week following the 15th or 22nd of September, 1874 when Mr. Boomer showed him a circular (Defts. Ex. No. 1), which contained an article entitled "Laying up the Cheese" (see page 70). Mr. Clark found fault because of that description being given in that circular. He did not write or authorize the advertisement or description of the circular, (see page 70), nor did he acquiesce therein, nor consent thereto.

Mr. Boomer says, page 161, that Clark did not pay for, nor authorize the advertisement in the circular. Mr. Boomer also states that the invention was first exhibited on the Boomer & Boschert presses at the

Michigan State fair, after the 15th or 22nd of September, 1874. Mr. Boomer also states (pages 50-52) that it was after the State fair at Columbus, Ohio, which opened September 8, 1874, that he first saw the advance sheet, or proof copy of the circular which was first distributed at the Michigan State fair. Mr. Clark testified that he first took orders for his pomace-holder at the Michigan Snate fair, and that then he first made and sold them, and has ever since continued them in use.

Thus, while there is not a word of testimony on behalf of the defendant to show that the invention described in the patent was abandoned by Clark, or used prior to September 11, 1874, the complainant's proof shows conclusively that it was not used prior to that date, and was not abandoned by the inventor, Mr. Clark.

Even if the Boomer & Boschert circular had been published before September 11, 1874, that fact would not prove public use or sale of Clark's invention. Such a circular unauthorized by Mr. Clark and not consented to by him, would not deprive him of his invention or defeat his patent. No act or declaration of abandonment is shown. The rule of law is that proof of acquiescense in offering or selling a new invention to the public or proof of abandonment must be beyond all reasonable doubt, as every presumption is the other way.

Andrews v. Carman, 13 Blatch., 323.
Jones v. Sewell, 6 Fisher Pat. Cases, 367.

Experimental use occuring more than two years prior to the application does not work abandonment.

Sinclair v. Backers, 17 O. G., 1503, also, U. S. Rifle Co., v. Whitney, 11 O. G., 373.
Henry v. Francistown, 9 O. G., 409.

Inference of abandonment is never favored by Courts.

Curtis on Patents, 3rd Ed. Sec. 389.

It is true that Mr. Clark did wait until nearly two years had expired before he applied for his patent, but it is equally true that he did apply for a patent before his invention had been in use or on sale for two years. The law was complied with and the patentee should have the benefit of his invention. Mr. Clark did not experiment in secret, but the public saw and immediately appropriated to their own advantages the results of his genius. Mr. Clark would have applied for a patent long before he did, but he was so poor that he actually did not have the means to pay the necessary expenses of the application for a patent. He had in mind the two years limit and when the time had nearly expired he went to Charles G. Hampton who purchased a one-half interest in the invention and in his prior patent for $500, a part of which money was paid by Hampton for the expenses of taking out the patent (see page 290, also, page 48, q. 162).

Much has been said or suggested as to the intimate relations between Mr. Boomer and the patentee Clark. But the undisputed evidence shows that for two seasons, 1875 and 1876, the Boomer & Boschert Press Co. sold with their presses the Clark Pomace Holder complete, claiming that it was not patented and that all had a right to use it, (pages 45, 46 and 47). They did this in direct hostility and opposition to Clark. When Clark finally obtained a patent it was to the interest of the Press company to break the patent ahd they consulted counsel upon the subject but were advised that the patent was valid. Clark had forbidden their making any more pomace holders and was threatening the customers

to whom they had already sold the pomace holders with suit to restrain their use. In this dilemma Mr. Boomer went to Michigan on purpose to settle with Clark and arrange with him so that all patrons who had purchased of the Boomer & Boschert Company should not be troubled and that the Boomer & Boschert Press Company could thereafter manufacturer the Pomace Holders at a fixed royalty. This he did, and on the same trip purchased a one-fourth interest in each patent from Mr. Hampton (see pages 47 and 134). Afterward the appellant, The Clark Pomace Holder Company, was organized with Mr. Clark president, and Mr. Boomer vice-president.

This is the whole history of the concern. Every fact and circustance connected with the whole transaction will bear the closest scrutiny and show there was no connivance or conspiracy between Mr. Clark and Mr. Boomer to defraud the public. Each acted fairly and openly, in hostility to, or harmony with each other as was to their individual interest.

V.

As to the Defense that the Invention was Described in a Printed Publication.

The foregoing observations apply also to the allegations in paragraphs 15 and 17 of the answer. The circular referred to as the "Boomer & Boscher Press" was not a newspaper. It was merely a circular, casual, without continuity. And it was not printed or circulated until after time when Mr. Clark made this invention. The circular was printed some time in September, 1874. Clark made his invention in 1873 (see answer 113, page 75). He described his invention to Mr. Boomer in June, 1874 (see page 71).

It is therefore clear that whatever knowledge Boomer had of the invention he acquired from Clark. Boomer testified positively that he first learned of this device from Clark (pages 44 and 167). As to the "Cider Makers' Manual" we say: *First*, that the "Cider Makers' Manual" contains a description of racks and cloths as used inside of a crib the same as described in the Holbrook patent, and does not describe the Clark invention, or any device substantially the same; *Secondly*, that said publication was not pleaded by defendant and being introduced in evidence under objection (see page 280), is not evidence for any purpose whatever.

Novelty is not negatived by a printed publication, unless the device was described therein prior to the date of the invention by the patentee.

Cochrane v. Deener, 94 U. S. 791.
Elizabeth v. Pavement Co., 97 U. S. 130.

The latter of which cases, also holds that it is not the public knowledge of his invention that precludes an inventor from obtaining a patent for it, but a public use or sale of it.

VI.

As to the Defense that the Description of the Patent is Insufficient.

Mr. Selkirk, defendant's expert, swears (pages 206-207), that the drawings and specifications of the patent are "not so clear and as sufficient as it should or might be," but that he believes "a skilled mechanic could, from the drawings and specifications, construct the cheese former, as illustrated in that patent, Exhibit No. 1, and operate the same." But

intimates that a simple, practical cider maker could not construct and use the invention from the patent.

Of all the practical cider makers called as witnesses by the defense, not one swore that he could not make and use the device from the description of the patent itself. But on the other hand, a large number of practical cider makers, called for the complaint, have sworn that they could make and use the device from the drawings and specification of the patent.

Clarence Packer, on page 21 of the record, swore he could make and use it, and that it is generally used by cider makers.

John G. Ward, on page 146, swore he could make and use it from the description of the patent.

William H. Holbrook, of Sherburne, Mass., swore he could make and use it from the patent (pages 154-157). Mr. Holbrook is a son of Jonathan Holbrook, who is patentee of a cider-press and pomace-holder, who is named as a witness by the defendant in his answer, and whose patent is offered in evidence by the defence and found on page 301. He points out the difference between his father's invention and the Clark cheese-former and swears that the Clark invention is of great utility and is much used among cider-makers, and that he thinks it is much preferable to the Holbrook cheese-former.

Thomas P. Rogers, (page 157), say that the Clark patent is perfectly plain, and that he and any cider-maker could make and use the device described in it from an examination of the patent. Also that it is now in general use, and he perferred to have cider made from Clark's cheese-former.

Daniel Harrison (page 167), says there would be no difficulty in persons skilled in the art understanding the construction and use of the Clark invention from an examination of the patent. That he had used the device since 1876, and that it has increased

the facilities of his mill more than four fold; that he considered it the best device in use to lay up pomace with.

George B. Boomer, pages 159 and following, says he has, for many years, been engaged in the business manufacturing cider-making machinery; that he has introduced many hundred of the Clark pomace holders into use, and that they are the most favorably received of any device known among cider makers. That he has a large acquaintance with cider-makers and the appliances used by them. That he has a record of nearly 2,000 cider-makers in New York State alone, and of the methods and devices uesd by them in their business. Also, that he has taken out patents himself, and examined other patents, and that a person skilled in the art to which this patent appertains would have no difficulty in construction and using the device described in the Clark patent from an examination of the patent itself.

William H. Low, complainant's expert, testifies that in his opinion a skilled cider-maker would have no difficulty in understanding the construction and use of Clark's invention from an examination of the patent.

Defendant Ferguson, seems to have experienced no difficulty in understanding the patent which is Complaint's Exhibit No. 1 (see questions 11 and 13, page 174).

These witnesses give in detail, under cross-examination the manner of using the Clark cheese-former, and show that the alleged difficulties mentioned by defendant's expert, Selkirk, are all chimerical, and have no existence in the minds of practical expert cider-makers. These witnesses also state that the Clark model, Complainant's Exhibit No. 9, correctly represents the device described in the Clark patent No. 187,100.

The defendant also called numerous witnesses who professed their familiarity with cider-making, and the machinery appertaining thereto, yet not one of them found that complainant's patent was insufficient, in its description and explanation of the invention. Thus we see that many witnesses were called by both sides who were practical cider-makers. To that class the description in complainant's patent is especially addressed. Practical cider-makers, would be likely to know the terms of the art and the names of the apparatus and appliances, which are used in the patent, and to understand the meaning of the specification. Their verdict is unanimous, as to its sufficiency. The drawing may not be in every respect artistic and a critical artist, like the defendant's expert, may be able to find a flaw with respect to a line which ought or ought not to be dotted, but it is evident from inspection, and from the testimony on the subject of the art that the patent fully discloses the invention, and is sufficient to enable those skilled in the art to construct, and use it.

The objection to the drawings of the patent was first raised by the defense in the examination of defendant's expert, and was objected to by complainant (pages 208 209). No foundation is laid therefore in the answer and no defense of that sort is set up therein. This defense is not therefore properly before the court. This court, in Harrison vs. Nixan, 9 Peters 483 says: "If the proof go to the matters not within the allegation, the court cannot judicially act upon them as ground for its decision, for the pleadings do not put them in contestation." In Wanson vs. Peterson, 13 Off. Gaz., 548 argument as to in-

sifficiency of specification was not allowed, that defense not being set up in the answer.

Rubber Co. vs. Goodyear, 9 Wallace 793.
Goodyear v. Providence R. Co. 2 Fisher Pat. Cases 499.
Tripp vs. Vincent, 3 Barbour Ch. R. 613.

It is well settled that courts will consider patents in a liberal spirit. Klein vs. Russell (Syl. 7) 19 Wallace 413. See Hamilton vs. Ives, 6 Fisher Patent Cases, 233, where the court quotes as follows:

"It is well settled by the court that in the effort "to ascertain the intention and meaning of the "specification and claims they are to be viewed in "a liberal spirit, that if possible, the object of the "inventor, or patentee, may be carried out. Mere "rigid technicalities are to be set aside unless there "is a clear legal necessity for sustaining them." The above quotation is from page 448 of 3 Fisher's Pat. Cases in Goodyear vs. Berry.

VII.

As to the Defense that Boomer is the Inventor and tha Clark Got the Patent Surreptitiously.

The defense suggested in paragraph 15 of the answer that Clark got his knowledge of the invention from Boomer, and the allegation of paragraph 16, that Clark obtained his patent surreptitiously are not sustained by any proof. The testimony shows that there was no communication or suggestion of the invention by Boomer to Clark, but on the contrary, that Clark made known the invention to Boomer. That Clark made the invention in 1873, and that the first intimation or idea that Boomer

had of the invention was in 1874, when Clark showed him the model of his pomace-holder (see page 44).

VIII.

As to the Defense that Clark did not Sign the Oath on His Application for a Patent.

We simply say, 1st, that the file wrapper shows (page 294) that Clark did appear before a Justice of the Peace and make oath to all the facts then required by the patent office; 2nd, there was no law requiring the applicant to sign his oath; 3rd, there is no law requiring the oath to be in writing, or to be recorded; 4th, there is no evidence Clark did not appear before the commissioner of patents and take the required oath, either this or another oath besides the one set forth in the file wrapper. There is no evidence on the subject. But, furthermore, this defense was not raised by the answer, but on the contrary, the defendant, in his answer (page 9, paragraph 15) avers "that he, said Clark, for the purpose of de-"ceiving said commissioner, and the public, fraudu-"lently, and with evil intent, maliciously and "falsely swore that he was the original and first in-"ventor of said improvement." By reason of that averment, the defendant is estopped from now denying that Clark took any oath.

But the patent itself (see page 284) recites that Clark "complied with the various requirements of law in such cases made and provided," which is, at least, presumptive evidence that Clark took the required oath.

Seymour v. Osborne, 11 Wallace, 516.
See Walker on Patents, page 79.

IX.

As to Infringement.

The infringement by defendant is not specifically denied in the answer, and was practically admitted during the whole trial of the case. The defendant, Ferguson, himself expressly admitted the infringement, see page 180 the following testimony on cross-examination of Ferguson:

"Q. 80. When did you have your first notice that you were infringing? A. Near the first of April; in March, 1881."

"Q. 81. In what way had you been laying up cheeses previous to this notice? A. Cloth, racks and form."

"Q. 82. In what way were they used? A. As described by me before."

"Q. 83. As described in Plaintiff's Exhibit No. 1?" (the patent in suit, see pages 20 and 284 to 286) "A. Very much the same."

"Q. 84. Did you make cider that way in 1880? A. Yes."

"Q. 85. In 1878? A. Yes."

"Q. 86. In 1879? A. Yes."

"Q. 87. In 1877? A. Yes, substantially the same; some of the racks were double."

Also, on direct examination (page 174, ans. 11 to 13), he says he commenced to lay up cheeses in accordance with the patent in suit in 1875.

On page 181, ans. 96, he says he has received circulars annually from the Boomer & Boschert Press Co. since 1876. Each one of these circulars describes Clark's invention in detail and gives notice of his patent. They are all in evidence.

He also testified.

"Q. 97. You have seen this improvement described in that circular since 1877, have you not? A. Yes."

"Q. 98. And you saw the claim in these circulars that this improvement was patented, did you not? A. I think I did."

"Q. 99. You knew then before March, 1881, that you were using an apparatus on which it was claimed there was a patent? A. I knew they claimed it, but I did not believe that they had any grounds for their claims. I based my belief on the knowledge of former use. I would not have been fool enough to use it if I had not known that parties had used this device for years before the date of the patent."

There can be no question as to the infringement by the defendant. This is also shown by exhibits produced by defendant, and marked Defendants Exhibits Nos. 2 and 3, December 5th, 1881, but must not be confused with Plaintiff's Exhibit No. 11 which is a combination of form and rack used by defendant, after the commencement of this action (see page 26, answer 28 and following, and page 175, answer 19).

Therefore upon the whole case, we maintain that John Clark, was the first and original inventor, and discoverer of the improvement in cheese formers described and claimed in letters patent No. 187,100. That the specification of said patent are sufficient and disclose novelty, utility and invention. That the combination therein claimed is patentable and was not in use, or on sale for more than two years prior to the application for said patent by said Clark. That said patent is good and valid in law and equity and was infringed by defendant, and the Circuit Court erred in dismissing said complaint.

The decree of the Circuit Court should be reversed,

and the case remanded to that court, with directions to enter a decree sustaining the validity of the patent sued on and decreeing infringement and awarding an account of profits and damages, as prayed for and granting a perpetual injunction according to the prayer of the bill.

WALTER E. WARD,
Of counsel for Complainant and Appellant.

119-335

FILED
OCT. 21 1886
JAMES H. McKENNY,
CLERK

IN THE

SUPREME COURT

OF THE

UNITED STATES.

OCTOBER TERM, 1886—No. 58.

THE CLARK POMACE HOLDER COMPANY,
APPELLANT,
against
WILLIAM H. FERGUSON.

Appeal from the Circuit Court of the United States for the Northern District of New York.

Brief of Counsel for Appellee.

WILLIAM H. KING,
Counsel for Appellee.

ALBANY, N. Y.:
RIGGS PRINTING AND PUBLISHING HOUSE,
1886.

IN THE

SUPREME COURT

OF THE

UNITED STATES.

UNITED STATES SUPREME COURT.

THE CLARK POMACE HOLDER COMPANY, APPELLANT,
agst.
WILLIAM H. FERGUSON.

No. 58.
October Term, 1886.

BRIEF OF COUNSEL OF APPELLEE.

The appeal of this case is from a judgment rendered by the Circuit Court of the United States for the Northern District of New York, adjudging and decreeing that the patent issued to John Clark, bearing date February 6, 1877, and numbered 187,100, for an "improvement in cheese formers," is invalid, and that the bill of complaint in the action, which was for an injunction and damages upon an alleged claim that the defendant infringed said patent, be dismissed with costs, and granting judgment for costs. It is pretended that said patent was assigned to the complainant.

The patent in question (see record page 285) recites the object that the patentee has in view, is the laying up of a "cheese" for the cider-press where each layer is folded up in a cloth, to secure uniformity of thickness of all the layers in the mass or cheese, and thus secure uniform pressure on its entire area, and to avoid all tendency to break the pomace frames or racks. To this end it consists in the employment of a guide-frame, in combination with extended pomace racks, as more fully hereinafter set forth.

Figure 1 is a perspective view showing the manner of laying up a cheese in the press. Figure 2 is a cross section at X X.

In the drawing A represents the lower framework of a cider-press, on which is laid a bed B. C is a pomace rack, which may be rigid, as shown, or flexible as described in letters patent No. 148,034, issued to this patentee March 3, 1874. On this rack is laid a guide-frame, D, whose bottom girts are not spaced far enough apart to extend the full length of the rack on which they rest. A cloth, E, large enough to envelop the layer is then laid in the rack, inside the frame, and opened out to receive the pomace, which is "struck" level with the girts of the frame, after which the cloth is folded over the leveled pomace and the frame is lifted off. The next and succeeding racks are in like manner laid on the first and filled up, and a follower is placed on the upper one, when the cheese is ready to press. Laid up in this way, the several layers are uniform in thickness, and the cheese, in mass, is level on top and offers a uniform resistance to the pressure over its entire area, thus assuring the expression of all the juice and precluding the danger of breaking the pomace racks.

The claim of the patent is "the guide-frame D, in combination with an extended pomace rack, and

a cloth to inclose a layer of pomace therein, substantially as described."

The opinion of the Hon. A. C. COXE, the judge who decided the case at the Circuit is as follows:

"This is an equity action for infringement of letters patent issued to John Clark, on the 6th day of February, 1877, for an alleged improvement in cheese-formers for cider-presses. The patent was subsequently assigned to the complainant. The patentee in the specification declares: The object I have in view is in laying up a 'cheese' for the cider press, where each layer is folded up in a cloth to secure uniformity of thickness of all the layers in the mass or cheese, and thus secure uniform pressure on its entire area, and to avoid all tendency to break the pomace frames or racks. To this end it consists in the employment of a guide frame in combination with extended pomace racks, as more fully hereinafter set forth."

The claim is in the following words: "The guide-frame D, in combination with an extended pomace-rack, and a cloth to enclose a layer of pomace therein, substantially as described."

In the "Cider Makers' Manual," published in 1869, by J. S. Buell, the author, after stating the advantages to be derived from the substitution of cloths for straw, as used in the old method of cider making, proceeds to describe, at page 47, a plan which suggested itself to him in the fall of 1868, and which, in its essential particulars, is similar to the process described in the patent. After explaining how the frames are made, by placing lath or thin boards together and nailing to them similar boards placed at right angles, he proceeds in these words: "These frames are designated and known as pomace frames, and are used in laying up a cheese as follows:

"*First.* Place upon the platform of the press one

of these frames, seeing that it covers the entire inner surface of the curb. Place upon the top of this frame the cloth or cloths, at the same time covering the inside of the rack with one thickness of cloth, laying the lower ends over the frame, and then fill in with pomace to the uniform depth of from three to five inches. Then lay on cloths, and upon the cloths place another frame, upon which lay other cloths and add thereto five inches of pomace, thus building up successive layers of frames, cloths, pomace, cloths, frames, cloths, pomace, alternating in like manner until the curb is filled, and then proceed as before described. The frames separate the cloths and allow the free passage of the cider from all parts of the cheese through and between them, while the openings between the slats of the frames act as conduits for the liquid to the outside receptacle."

It also appears by other evidence that two years and more before the application of cloths had been used in a precisely similar manner to that described in the patent, racks or frames had been used, so had guide-frames.

This is not seriously disputed by the complainant's counsel, but they contend that the combination is new; that a guide-frame in combination with an extended pomace-rack and a cloth to inclose the layer of pomace was not used or known before.

Without pausing to consider the defense of a purely technical character relating to defects in the drawings, omissions in the affidavit, and the like, it will be more satisfactory to examine, in the light of recent adjudications, the three questions which seem to be of paramount importance:

First. Does the use of the various elements claimed in the patent constitute a valid combination?

Second. Has the patentee discovered anything that rises to the dignity of invention? and,

Third. Was the precise process described in the patent known and used two years and more prior to the application?

The law as applicable to patents of this character would seem to be as follows:

All the component parts must so enter into a combination of old elements that each qualifies every other.

The result must be the product of the combination which is patentable, provided something new and useful is produced. If the elements of the combination act independently of each other, or if one element acts independently of the others, it is an aggregation of parts, and not entitled to protection as a combination. It is indispensable that a new and useful result should be produced either by the invention of a new thing or a new combination of old things. Unless this is the case, even though the elements act reciprocally and in combination, the requirements of the law are not satisfied. The combination must be new; so must the result.

Hailes v. Van Wormer, 20 Wall., 353.
Pickering v. McCullough, 104 U. S., 310.
Reckendorfer v. Faber, 92 U. S., 347.
Packing Co. Cases, 105 U. S., 566.
Perry v. Co-Operative Co., 12 Fed. Rep. 436.
Welling v. Crane, 14 Fed. Rep., 571.
Slawson v. Railroad Co., 4 Fed. Rep., 531.
Stephenson v. Railroad Co., 14 Fed. Rep., 457.
Manufacturing Co. v. Meyers, 23 O. G. 1443.
Doubleday v. Roess, 11 Fed. Rep., 737.

Turning now to the patent in controversy, it may be said at the outset that the presumption of law, where a patent is claimed for a combination simply,

is that all the elements of the combination are old. But in addition to this presumption, it is, as above stated, practically conceded that all the elements entering into this combination are old.

The proof sufficiently establishes the fact that cloths and racks had been used before; that they had been used both separately and in combination, and, further, that they had been used in combination with some device which, if not technically a "guide frame, enabled the manufacturer to produce a layer of pomace of a uniform depth of from three to five inches." So it would seem that the only distinction that can be suggested between the old method and the method described in the patent is in the extended racks; in the use of a guide-frame a few inches smaller instead a few inches larger than the racks.

The result sought and obtained in both cases was the expression of the juice from the pomace. Whether the new method possesses advantages over the old is left somewhat to conjecture by the proof. Perhaps the assumption that it does possess such advantages is a legitimate one, arising from the patent itself.

It is somewhat extremely difficult to distinguish between a meritorious combination and a mere aggregation of distinct parts, and the case at bar furnishes a new illustration of this fact.

It is not quite easy to perceive how the use of the guide-frame causes any coaction or combination between it and the racks and cloths. No new result is produced by its use; the press operates in the old way; the cheese is pressed down and the juice is pressed out as before. To what that is new or useful does the guide-frame contribute in connection with the other devices? In other words, suppose the patentee to be the first inventor of racks and cloths, could he be deprived of the benefits of

his discovery, in its simplest and most practical form, by another person who should obtain a patent for such a combination as is described in the specification?

Would it not be immediately insisted that the latter was simply using the old invention with the addition of a very simple and well-known mechanical contrivance which added to the old combination no new co-operative element?

It would seem at least doubtful whether the guide-frame, to any greater extent than the shovel with which the pomace is placed upon the racks, or the instrument with which it is "struck level with the girts of the frame," acts in combination with the racks and cloths. The guide-frame has been removed and has ceased to perform any function before the racks and cloths begin to act reciprocally; it does not act on them or they on it. If straw or a solid platform were under the guide-frame instead of the racks it would perform the same office.

To constitute a valid combination there must be a new result produced by the combined action of all the component parts. What is the result in this case?

It may perhaps be admitted that the guide-frame operates more conveniently than the old devices; but something more than this is necessary to sustain a patent for combination.

Second. Assuming for the moment that there is here what the law recognizes as a combination, viz.: such a union of separate and distinct parts that each operates upon and with the others, producing a new and useful result by their united action, the next question to be considered is, has the patentee invented anything worthy of protection?

Before this patent cider makers had an undoubted right to use racks and cloths in combination or alone; and they had also a right to use some device by

which the pomace could be placed upon the rack in layers of uniform thickness. Any man of ordinary mechanical ingenuity who wished to confine a yielding substance within prescribed limits would almost certainly make a frame of the desired size. Clark did this and only this. He nailed four boards of equal length together at the corners in the form of a hollow square and laid it on the rack. Why is there any more of invention in this than the placing of the window in the stove case, or the mirror in the car case?

What instrumentality does the patentee here use that was not known and free to every cider maker long before the patent? Take away the guide frame and nothing remains of his invention. Its use, though in a new position, would seem to be a simple mechanical contrivance requiring only ordinary skill and judgment and not amounting to invention. Furnish any practical cider maker with cloths and racks, direct him to place the pomace on the racks in a uniform and symmetrical manner, and it would immediately occur to him to do just what the patentee here did.

To adopt the sententious language of the court in Stephenson v. The Railroad Company (*supra*), it may be said, "To authorize a patent the law requires the invention of a new thing. It is not satisfied by inventing a new place for an old thing without change of result."

Third. But it is insisted that the precise combination described in the patent was in use more than two years before the application. The complainant does not seriously dispute that it was used in the fall of 1874, but argues that its use was subsequent to September 11th, the application being filed September 11, 1876.

The undisputed evidence shows that it was used for a long time prior to the application, and in some

instances the complainant is forced to admit that the delay in applying for a patent brought the patentee very close to the two years' limitation. A number of witnesses who are unimpeached swear to the use of the combination in 1873, and even before that year. It is true that several persons were called by the complainant who testify that they heard nothing of its use though living in the immediate neighborhood. It is also true that some of defendant's witnesses are contradicted and otherwise discredited.

Bearing in mind, however, the rule that proof of but one instance of public use more than two years prior to the application for the patent is sufficient to defeat it, the court would hardly be justified in disregarding the testimony of the numerous witnesses who positively affirm that they used the rack, cloths and form in 1871, 1872, 1873, 1874

Egbert v. Lipman, 104 U. S., 333
Manning v. Glue Co., Vol. 23 O. G., 2413.

As indicative of the patentee's own views upon the novelty and the patentibility of the alleged invention, it appears that he visited Syracuse in the summer of 1874 and explained his system to a member of the Boomer & Boschert Press Company—Mr. Boomer.

In September following, in a periodical issued by that company and widely circulated, there appeared a full and complete description of the system described in the patent. Under the heading, "The best system yet devised," is the following statement:

"It is to last year's experience that we are indebted for the most sensible plans for laying up a cheese, a plan which we predict will be speedily adopted by all wide-awake cider makers, although perhaps it has not yet been sufficiently tried to establish its merits, yet, as it has been successfully put into use by several parties, there seems to be no question as to its

feasibility." Then follows the description. This certainly is a very significant piece of evidence in view of the fact that Mr. Boomer, who admits that he probably wrote the article, is now vice-president of the Clark Pomace Holder Company, the complainant in this action, his relations with the patentee being of an intimate and confidential character.

Upon the whole evidence it is thought that the patent cannot be sustained. The bill is therefore dismissed."

POINTS.

I. John Clark, the alleged inventor and patentee of the alleged invention, was not the first inventor of the improvement described and claimed in the patent in suit. The precise combination and the precise process described and claimed in the patent in suit was known and used two years and more prior to the application for said patent.

First. The alleged improvement was described in the printed publication known as the "Cider-Makers' Manual, by J. S. Buel," published at Buffalo in 1869. Some six years before the date of the application for the patent (see defendants' exhibit of May 30, 1882). On page 47 of said exhibit we find the statement of the invention as detailed in the opinion of the court below, just read.

Second. It was published in the "Boomer and Boschert Press," a publication issued at Syracuse, N. Y., under date of September, 1874, more than two years prior to said date of application. (See exhibit, also page 42 of the printed Transcript of Record, question 88.)

The article in question is entitled and is as follows:

"THE BEST SYSTEM YET DEVISED.—It is to last year's experience that we are indebted for the most

sensible plan for laying up cheese, a plan which, we predict, will be speedily adopted by all wide-awake cider makers, although perhaps it has not yet been sufficiently tried to establish its merits; yet, *as it has been successfully put in use by several parties* there seems to be no question of its feasibility. It is as follows: *Commence on the platform of the press and lay a rack; place thereon a form three and a half inches deep and four to six inches smaller each way than the rack. Over this form spread a cloth, and fill the form even full of pomace; then turn in the sides and ends of the cloth over the pomace, the cloth being of sufficient size to just cover the pomace. The form is then raised and another rack placed on the layer of pomace just formed, the form being placed on this new rack, a cloth again spread over it, and another layer of pomace put in as before.* Ten or twelve racks are used in one cheese, and as many cloths, less one. When the last layer is formed, the form is taken off and a rack placed. The follower is then put on and the pressing commenced. A guide should be used in laying up the cheese, so as to have the form cover every time directly above the last layer, and strong guides should be used to support the racks on the edges to prevent any liability of their moving sideways."

"THE RACKS.—The following is a figure of the rack (here follows illustration). The racks are made of basswood strips one-half inch thick by three-quarters inch wide, placed one-quarter inch apart, with a beveled strip about two inches wide nailed across each end. This piece should be beveled, as seen in the cut. Good clinch nails should be used, and the racks should be about four feet six inches, by four feet eight inches square for a cheese of ten barrels. The form should be four feet square inside, made by nailing boards one inch thick and three and one-

half or four inches wide together in the form of the sides of a box. It should be stiffened by corner pieces on the outside."

It is admitted by the witness, Geo. B. Boomer, the vice-president of the appellant company, also member of the firm of Boomer & Boschert Company, the firm who published the publication last above named, that he wrote the above articles sometime in August, 1874, he thinks. At any rate the paper was published and mailed early in September, 1874, in time for the fairs held that month, which he attended (Q. 83, p. 42), one of which fairs was held at Columbus, Ohio, about the 7th of September, 1874 (Q. 21, p. 51). He knew of the matter concerning which he had written, however, some time before he actually wrote the articles. Clark says he told Boomer about it in June, 1874, while this same witness says in answer to q. 117, *et seq.*, page 45 of Transcript, that "Stiff racks were in common use at and before the time of the alleged invention by Clark of the improvement claimed in the patent in suit. That forms had been in use in cider making for a great many years. That cloth had always been used for pressing cider a great many years. That he had used them a number of years before the date of the pretended application, that is, before 1876. That the use of cloths in pressing cider was no novelty.

In answer to questions 21 and 22 to same witness (page 161 Transcript), he says "the guide frame" was known by different names. That he has heard it called by several, such as a "hoop, a guide-frame, a cheese-former, a form, although square. That a guide-frame is the best name for it."

Complainant's counsel also admitted (see page 25 of Transcript) that cloths had been used in the manufacture of cider for more than two years prior

to the date of the application for the patent, to wit.: September 11, 1876.

This witness also says that his firm built a form for Tallmadge which was exhibited at a fair in 1873, and that the racks might have extended underneath the form in that Tallmadge exhibit, and out so far as to allow the cheese to be built up on top of the rack. (See ques. 56 *et seq.*, p. 40.)

Here we have one of the officers of the appellant company acknowledging that he knew of the combination claimed in the patent, at least knew of each of the elements claimed in the combination for more than two years before the date of the said application. That in 1873 his firm, known as Boomer & Boschert Press Company, exhibited at a fair a cider press upon which was used the combination of racks and cloths, and that his firm at that time made a lard press upon which was used "a hoop" or "form."

That the Tallmadge press which his firm built for him had the crib, racks and cloths thereon, and afterwards he calls the crib a hoop.

Third. In the patent to Charles H. Thomas, No. 50,665, dated October 24, 1865, for "improvement in a cider presses," defendant's ex. No. 1, of April 28, 1882, (see page 299 of printed transcript), we find the second claim of the patent is "In combination with a press constructed as described, *the use of the sacking*, as and for the purpose set forth."

In the same patent we find shown and described a hoop, or frame as is termed in the Clark patent, the only difference being that the hoop in the Thomas patent is circular, while in the Clark patent it is rectangular. In the Thomas patent the patentee describes the use of the hoop and sacking as follows:

"I place the hoop shown in figure 4 over the screw, then place a piece of the sacking therein, leaving its edges hanging over outside of the hoop,

and fill in the pomace equally all around the screw until the hoop is nearly full. I then turn the outer edges of the sacking over in on top of the pomace, and laying another piece of sacking thereon and raising the hoop, proceed as before, and so continue until the cheese is completed. I then place the planks D D on the cheese, with suitable blocks, and screw down the nut C.

It will be observed that by this arrangement I dispense with the heavy and expensive frames (meaning the racks), usually made use of in cider-presses, and that consequently there is no necessity of removing and replacing the lever every time a half-turn or less is given to the screw, as is ordinarily the case, there being no frame to prevent the person or horse, in case one is used, from traveling round in a continuous circle. By making the cheese round I avoid the corners which occur when made *square in the usual manner*, and, as all portions of the periphery of the cheese are equi-distant from the screw, it follows that all portions will be pressed equally."

Here, in the Thomas patent, we have the cloths and the form used together in the same manner as is shown in the Clark patent; the only difference between the two inventions in these regards being that one form is round, the other rectangular. In the Thomas patent, the racks, which are usually made use of in cider-presses, are dispensed with.

As will appear hereafter, racks made in the same manner as those shown and described in the Clark patent were used by and were well known to cider-makers in making cider—by means of presses, for very many years before the application for the letters patent in suit, and it is for that reason the expression is used in the Thomas patent, "which are usually made use of in cider presses."

If there was no other evidence in the case of the

use of cloth in making cider, the patent of Thomas, issued in 1865, would be suffcient proof of the fact, for in that we find a description of such use and a specific claim therefor.

It also appears that forms, rectangular in shape, were, many years before the said application for said patent, in use by cider-makers in making cider.

Fourth. In the patent to Jonathan Holbrook for "Improvement in Cider-presses, No. 117,075, dated July 18, 1871, known as Defendant's Exhibit No. 2 of April 28, 1882 (see page 301 of printed Transcript), we find what are called therein lattice-work partitions, G G, each being composed of two series of slats, h i, those of such series being arranged parallel, and at short distances apart, and at right angles to the other series, they being riveted or otherwise screwed together. These divisional partitions are to be of a size to fit within the receiver, and, when used, there is to be one or more layers of cloth, k, placed on the top of each of them.

In this patent we have also the form made of upright slats, fastened to horizontal bars, and a cloth is placed inside of such form.

The only difference between this invention and the Clark being in the construction of the forms. In the Holbrook case it is composed, as said before, of vertical slats fastened to horizontal bars. In the Clark patent the form is made of four closed sides.

In the Thomas patent we have the form or guide-frame, racks and cloths described, all being used in the same way as the Clark patented invention. The Holbrook patent was granted three years before the date of the application by Clark for his patent.

Fifth. The alleged improvement had been used by George Casper at his cider-mill in Bramanville, New York, in his business of making cider, as

early as the fall of 1873 (see testimony of Casper, p. 191 of Transcript).

Casper swears that he commenced to use racks, form and cloths like the model offered in evidence, marked "Defendant's Exhibit No. 1 of December 12, 1881," in the latter part of the fall of 1873, and has been continuing to use these three things since that time.

In the model last referred to, "A" is the platform of the press; "B" the rack; "C" the form; "D" the cloths, five in all; "E" uprights, two in number. This witness says he used them in the following manner: "First. I placed the rack with a form on top, the rack *extending underneath and beyond the form;* then I laid on the five cloths extending outside the form, filled the same in with pomace even full; then I folded the cloths over the pomace, laid on another small cloth, then removed the form, then placed a rack on top of the cloths, another form on top of that, and built up as before."

On cross examination Casper says that "*we used cloths and a frame without the* racks in laying up pomace in 1872; we always had the two." After that, and until about November, 1873, he used two slats under the edge of the frame, and that the slats were laid across the edges of the layer of pomace, leaving the ends sticking out.

That he made three or five racks in 1873 and used them, and continued to use the racks, form and cloths from the latter part of 1873. That he used them in 1874, commencing in hop-picking time, about from the 20th to 30th of August, 1874, and that he made about 1,000 barrels of cider that year for custom make, and that he commenced in 1874 with eight or nine racks. He produces the bill of the Townsend Foundry for rods and posts which he had bought of them for his cider-presses in 1872—that year being the first he ever made cider. He

further says that when he commenced to use the slats he kept adding slats until finally, in the latter part of 1873, he made the racks, and that the racks lasted about two years, and upon being worn out he replaced them by new racks.

Witness says he never heard of Clark or saw his alleged invention before he commenced to use his form, racks and cloths.

The agents of the Boomer & Boschert Press Co. (see page 198) called several times upon the witness Casper and claimed that Clark had a patent, and this witness told these agents he had used the invention in 1874 and that the company might bring a suit.

Complainant's counsel wrote the witness about infringing the patent in suit, and the witness consulted a lawyer by the name of Kromer, who after being told how long Casper had been using the racks and cloths and forms all together, was told by the lawyer that it did not make any difference; it was witness' business to have a patent in two years, and that there was no hope for him; that he could not get rid of paying. He then got his son to write the complainant's counsel the letter "complainant's exhibit No. 2," December 13, 1881. After writing the letter he sought other counsel about the matter, and refused to call upon complainant's counsel (see page 200).

Several witnesses are brought by the complainant to contradict the witness Casper, but they all fail, because while they were neighbors in some instances and had not heard of anything new being used in the business of making cider by Casper, yet could not swear that he was not using the racks, cloths and forms in 1873 and 1874. Some of the witnesses however admit that he used the form and cloths in those years.

Complainants put upon the stand Peter B. Kro-

mer, the lawyer whom Casper consulted, in order to contradict Casper, but instead of contradicting him they proved his statement correct in this particular. Kromer (see answer to question 20, page 114) says Casper said he had received a letter from an attorney at Albany, asking for a royalty on some slats he used in pressing cider; he said that he had used them (the slats) in his manufacture there, commencing in 1874; he told me the patent that the attorney represented was obtained in 1876; he told me that the patentees, having two years' play, he would probably have to pay; that he had better write to the attorney, that as soon as he investigated and found things all right he would pay; in the meantime I advised him to send to Washington to the patent office, and get a copy of the patent the attorney was acting under, so that he would know what the patent covered.

Witness George Casper is corroborated in his statement of the use by him in 1873 of the racks, forms and cloths, by Daniel Stevens, who worked for him in 1873, who says that that year the cheese were laid up in Casper's mill as follows: "We first laid down a rack, put the curb—the form—on; we put cloths on each side all around, then we filled it with the pomace, laid our clothes over, hoisted our curb and put another rack on, and went through the same performance as before; the curb or form being raised by weights. (Question 8, *et seq.*, p. 201.)

He is also corroborated by his son Francis L. Casper, who says his father used racks, forms and cloths in 1873 (See question 7, p. 226, *et seq.*)

Without going further into the question of either corroboration or contradiction of this witness, George Casper, let us for a moment admit, for the sake of the argument, the theory of the complainant's counsel, that Casper did not use the full Clark invention of racks, forms and cloths until

1874. No attempt has been made to disprove the fact that Casper used the form or guide-frame and cloths in 1872, or the form, cloths and two or three slats which extended beyond the frame in 1873. If Casper did the latter, did he not use the whole of Clark's invention? Does the patent in suit state how many slats must be used to make a rack? Clark himself, in his earlier patent, had slats joined together by strings to make a flexible rack. Are the number of slats in a rack a necessary element of the invention? The theory of the complainant is that the novelty of the invention consists in extending the rack underneath and supporting the form or guide-frame. If we had only the two slats extending underneath the form, is the form not supported thereby? Was any new result obtained by the use of six, eight, or a dozen slats which was not obtained by the use of two or four? It will be remembered that Casper kept adding slats and then nailed them together by a slat going across them, thus gradually making a rack. Was there anything more done by Clark than was being done by Casper? Was there anything more done by either Casper or Clark than what a good mechanic would do? Would not a good mechanic have added slats if he found it necessary so to do?

It is submitted that the defendants have positively proved the use and knowledge of the Clark invention by Casper before the invention or discovery of the alleged invention by Clark, and in proving such knowledge and use in Casper, he has proved knowledge of the invention upon the part of Daniel Stevens and Francis L. Casper.

Sixth. The alleged invention was known to and used by George C. Valentine, at his cider-mill at Charlton, New York, in his business of making cider, as early as the fall of 1870. (See answers to question 6 *et seq.*, p. 234). That prior to 1870 he

used a form made of six-inch stuff—that is, six inches in height. In 1870 he used a form made of pine, four inches deep, four feet and three-quarter inches long, three feet five and three-quarters inches wide, inside measurement. It had a corner block outside to stiffen it, and had an ear cut or support that reached the post and held it in its place, with a brace from that support back to the corner of the form; that he has used this last form since 1870. In the beginning, that is, in 1869, he used loose slats laid between the layers—strips of narrow boards; the next that he made was in 1870, and consisted of slats nailed together and made it double, the slats running both ways, and he used them right along till, he thinks, it was about the second or third year the slats began to come off, and then he made them single. These racks he made himself. They were four feet ten inches long and four feet wide. (It will be remembered the form was four feet and three-quarter inches long and three feet five and three-quarter inches wide, thus making the rack larger than the form, so that the form could rest upon and be supported by the racks) Witness says the racks extended underneath the form (question 30, p. 236); that he commenced to use cloths in 1869, and has used clothes ever since then in his business (question 27, p. 236); that he first used the racks, forms and cloths in his business in 1870 (question 32, p. 236); he also states: "In 1869 I first laid my form and then I put my cloth on; the cloth was burlaps; I then folded it in and took the form off; I meant to have said I put the pomace in and folded my cloths; I took my form off and laid some strips, then I put my form on, laid my cloth again, filled it with pomace and proceeded as before until I had my cheese up; since then I have laid them with a rack and form and cloths and filled it with pomace, folded it over—folded the cloth over. I continued

to do the same until I got my cheese up. Witness says he first saw cheeses laid up with cloths at Tobey's cider mill at Glenville, Schenectady county, N. Y., in 1869; that he lived only six miles from Tobeys. (Question 104, p. 240.)

Gideon L. Valentine, a farmer, who lives about three-quarters of a mile from George C. Valentine, says the latter commenced to make cider for himself in 1868 or '69; that before that his brothers were with him, and that he, the witness, has been in the habit of drawing apples to Valentine's mill since 1872, and that he has visited that mill since 1872, every year; that in 1872 he saw and every year since he has seen the manner Valentine made cider at his mill, and that it was the same as Valentine testified to as above (see p. 247), and adds that it was common report among the neighbors of Mr. George C. Valentine, at Charlton, in the year 1872, and the years subsequent thereto, that he was using in his business of cider making, in laying up his cheeses, a rack or racks, form and cloths," and that the neighbors thought that by the use of these appliances it made the cider a good deal clearer through cloths instead of through straw. That among the neighbors who spoke of the method adopted by Valentine, he names Lorenzo Taylor, Eli Closson, John Chambers and Leander Hoyt.

John A. Chambers corroborates George C. Valentine (see p. 252).

This witness, who is a farmer, a cider maker and justice of the peace, and resident of Charlton, says he commenced to lay up cheeses in making cider with racks, form and cloths in 1872; that the rack was larger than and extended under the form; that he learned the idea from George C. Valentine, either in the fall of 1870–1871, when he saw one of Valentine's presses after the latter had laid up his cheese by means of racks, forms and cloths, and that it was

common report among Mr. Valentine's neighbors in the year 1872, and years subsequently thereto; that said valentine used in his business of cider making, racks, forms and cloths, and that the neighbors thought that process made nicer cider, clearer, with less sediment.

Chambers says he never saw these things, but Valentine told him how he laid his cheeses up.

Andrew F. Van Vorst, another of defendant's witnesses, who is a farmer, says he resided, between 1869 and 1873 next neighbor to George C. Valentine at Charlton, the farms adjoining; that he was frequently in Valentine's cider mill in those years, and saw Valentine lay up cheeses, and that he saw him lay them up prior to the cider-making season of 1873 with or by means of racks, form and cloth. That the racks were fastened together, crossed, one nailed to the other; that the form was a frame standing up, nailed together at the corners, and that the rack was larger than the form, the latter setting on the rack which extended out beyond the form, and the cloth was coarse linen. (See page 266.) This witness was not cross-examined.

Edward Merchant, another neighbor of George C. Valentine between 1869, when he, Merchant, moved to Charlton, until 1880, when he moved away, corroborates George C. Valentine as to the latter making cider in 1872, etc., by means of racks, forms and cloths. (See page 267.)

Here we have four respectable farmers, and neighbors of Valentine, one of whom is a cider-maker, fully corroborating said Valentine as to the time and manner of laying up cheeses, which manner corresponds to that disclosed in the patent in suit, thus showing conclusively the use by two of said witnesses and the knowledge by all of them, of the pretended improvement before the invention thereof by Clark.

Against this testimony the complainant offered in rebuttal the testimony of Oscar Alexander (see page 78), who says he worked a few hours for Geo. C. Valentine in 1869, but upon cross-examination says "he would not swear that he took down any cheese for him then, because he did whatever he was told to do, and he don't remember so far back. That in 1872 he lived half a mile from Valentine's mill and went into the latter's mill two or three times a year to get a drink of cider; that he was not in the mill in 1873, and did not live in the neighborhood that year (Qs. 20, 36, 41. 42, p. 80), and that he did not hear everything that was done at Valentine's because he was not lounging around there. That he did not see them work at Valentine's in 1872 and 1873. This witness, however, corroborates Chambers by saying that in the fall of 1873 he saw racks, forms and cloths used in Chamber's mill. (Question 85, *et seq.*, p. 83.)

Martin H. Smith, another of complainant's witnesses says (page 83) that he was a farmer and a cider maker between 1869 and 1874.. That he knew Geo. C. Valentine then; that he resided *about two miles* from Valentine then; that he is unable to answer the question whether or not he heard rumors or reports that Geo. C. Valentine was using racks and cloths in making cider, or using anything different from other cider-makers; that he does not recollect anything about it; that he might have heard such a report and forgotten it (questions 6, 12, 13, 14).

Nicholas Swartz, another of complainant's witnesses, says (page 87) he lived about a mile from Geo. C. Valentine in 1872 or 1873, and that he did not hear any rumor or report that said Valentine was using cloths or racks in making cider, or that he was using anything different from ordinary cider-makers.

George Reynolds says he was in Tobey's mill once in 1871, just at night; that he went after a couple of barrels of cider for Mr. Peck; that he was there just long enough to bring a couple of barrels of cider, and that they were taking down a cheese at the time; they were not at work; that he does not know what they did when they laid up the cheese; all he knows that what was left of the cheese he saw was laid up in straw; that he cannot tell how many presses they had, whether the screws were made of wood or iron, and doesn't remember to have seen either racks or forms around there (question 22, *et seq.*; 3d *et seq*, p. 89).

Jonathan Harvey, another witness for complainant, says (p. 90) that between 1868 and 1871 he lived about a mile and a half from Valentine's; that he was in Valentine's mill very often during the cider-making season in the years 1869, 1870 and 1871, and that he saw cloths used there and a square rack (questions 12, 14). That he only saw one cheese laid up in 1870 (ques. 40), and cannot swear positively as to Valentine laying up any cheese in 1871 (questions 44, 45); he however did see a form used at Valentine's during 1869, 1870 and 1871. (Question 55, *et seq.*, p. 93.) That while he has no recollection of seeing separate pieces of board, sticks, laid in between the layers in Valentine's mill in 1869, 1870 and 1871, still it might have been done and he not know it; one thing he does know and recollect about Valentine's mill, and that is, "*that people came quite a way for cider for some cause.*" (Question 60, p. 94.)

William Lansing, another witness, is brought on in rebuttal, but it leaks out that all his testimony relates to a new mill built by Tobey in 1875 (see question 98, p. 101), so his testimony goes for nothing; the testimony which he is brought on to

contradict all relating to an old mill used by Tobey before this new one was built.

Ormie De Graff, who is brought on to state that Tobey did not use racks, forms and cloths before 1875, has to admit upon cross-examination that Tobey might have used, prior to that year, racks, forms and cloths, and he not know it. (Question 42, *et seq.*, p. 110.)

Peter Brewster is brought on in rebuttal. This witness kept a hotel in 1870 and later, about two miles from Valentine's; that he heard rumors in 1874 and 1875 that Valentine was using racks and cloths in making cider in his mill, but he does not think he heard it in 1872 or 1873, and that he also heard that one Seeley, of Burnt Hills, was using them about that time. That these appliances were a new thing to him at the time he heard about them (pp. 117, 118), and that there might have been rumors of their use prior to 1874 that he didn't hear.

Next we have a young man twenty-six years of age, named Isaac Grovesteen, who says the first he heard of Valentine using racks and cloths was in 1874. He says he was not at home all the time in 1872 and 1873; that he had no occasion to go to Valentine's; that he doesn't think he went to Valentine's during those years, at least doesn't remember whether he did or not, and had no special occasion to hear any reports as to what the neighbors were doing, only as he sat around the store and heard them talking, and that he never heard Valentine say anything about the matter.

In support of the position of the defendant that Valentine used the improvement many years before Clark applied for a patent therefor, we have the uncontradicted evidence of four respectable farmers and cider-makers. Against this the testimony of pretended neighbors, some of whom corroborate the statement of the defendant's witnesses, while others

on cross-examination make admissions detrimental to the complainant's theory. It will be noticed that all the witnesses of the complainant say they heard in *1874* that Valentine used the improvement. These witnesses, however, speak only from memory, without anything to assist them in their recollection, and about a thing in which they had no pecuniary interest so as to cause them to recollect. Some of defendant's witnesses were in the business of making cider, and would naturally remember more accurately about matters pertaining to their own business. How can a hotel man state he heard rumors at one time any more than he can at another? Brewster might just as well have said he did not hear rumors until 1876 as to say he heard them in 1874. What was there to cause him to recollect? One of the complainant's witnesses said there was something that caused the people to go a long way to Valentine's for cider in 1872, and Valentine and the others told us what that reason was, that it was because he was using his new system of laying up cheeses with his form, extended rack and cloths. This one fact, if not a straw to lay up a cheese with, is surely a straw to show the correctness of the testimoney of defendant's witnesses.

Sixth. "The improvement in question was known to and used by Edward G. Dow, Sherburne, Chenango county, N. Y., as early as 1871 (see page 272, q. 9).

This witness describes accurately that he used hop-sacking; that the racks were made of slats crossing each other at right angles; that the form was nearly square, about five inches deep, the corners being secured by means of nails in a corner piece, wtth logs at each end in the cuts to rest against the bolts, and that the said racks extended beyond and underneath the form, and in answer to question 13, p. 273, he details the operation of laying

up the cheeses in the same manner as is described in the patent, and that he has used the racks, form and cloth, and laid up the cheeses in the same manner as described, from 1871 continuously to the time he testified. He also said that John Clark called on him in 1878 and saw his form, racks and cloth, and that Clark claimed he, Dow, infringed the patent in suit, and that he told Clark that he used those devices in making cider since 1871.

Here we have the positive proof of more than one person publicly and successfully using the improvement in his business prior to the date of the alleged invention by Clark, and the knowledge upon the part of many of such use.

The names and residences of some of the above named users, and persons who had knowledge, and the places where used, etc., have been inserted in the answer by an amendment thereto which appears on pages 232, 233 and 234 of the Transcript.

The prior knowledge and use of a single person is sufficient. The number is immaterial.

Coffin v. Ogden, 2 Whitman's Pat. Cases, 465; S. C., 18 Wallace, 120.
Bedford v. Hunt, 1 Mason, 302.
Egbert v. Lippmann, 104 U. S., 333.
Manning v. Glue Co., 23 O. G., 2413.

If the thing patented has been in use, or described in a public work, anterior to the supposed discovery of the patentee, his patent is void. Although he had no knowledge of such previous use or previous description, the law supposes he may have known it.

Evans v. Eaton, 1 Whitman's Pat. Cases, 81.

It was the intention of the legislature to invest an exclusive right in the inventor only, on condition that his invention was not known or used by the public.

Shaw v. Cooper, id., 178.

II.

The use of the various elements claimed in the patent do not constitute a valid combination. The combination is not a true combination, but is merely an aggregation or assemblage of parts. Old devices, at the best, have merely been brought into juxtaposition, and each part is allowed to work out its own effect without the production of something novel. Each of the elements act independently of the others. There is no novelty in the alleged improvement, and the patentee has not invented anything that rises to the dignity of invention.

In the patent to John Clark (who is the same person who is the patentee named in the patent in suit), dated March 3, 1874, No. 148,034, "for wine and cider presses," we find the invention to relate to an improvement in the "pomace frames" used in connection with the "crib," and among the objects of the invention. * * *

"*Thirdly*. To avoid irregularities in the degree of pressure throughout the cheese, to break the pomace frames by the use of such as will give to irregularities in the mass; and

"*Fourthly*. To produce clear and implied juice by the substitution of flexible pomace frames and factory cloths for straw or coarse burlaps, the use of which is enabled by the said frames."

The patentee states in his said specification that "the pomace frames are composed of a series of bars D, connected by cords *a*, tacked to them near their ends, making them perfectly flexible."

"In laying up the cheese a flexible frame is first laid in, and on it a fine factory or cotton muslin large enough to fold over the layer is laid, and on it is spread the pomace to the depth of about five inches. The cloth is then folded over the layer, and on it is placed another frame and another layer as

before, and so on until the crib is filled to the top. By using the flexible frame, in this manner I am enabled to use fine cloth instead of straw or coarse burlaps, through which to strain the expressed juice, and thus arrest the smaller particles of crushed fruit."

The third claim of the patent is for a flexible pomace frame composed of the bars D connected by the cords *a*, substantially as described and shown.

It will be borne in mind that the patent in suit states the object which the inventor has in view is, in laying up a cheese "for the cider press where each layer is folded up in a cloth to secure uniformity of thickness of all the layers in the mass or cheese, and thus secure uniform pressure in its entire area."

That the pomace rack may be rigid as shown in this patent, or flexible as described in the above patent of March 3, 1874, No. 148,034, issued to Clark.

The manner of laying up the "cheese," as far as the cloths and racks are concerned, are identical in description in both patents. The only difference between the two inventions in the two patents being that in the first he uses a higher form in which is placed the racks, and in the second a lower form which temporarily rests on the extended pomace frames.

Is it invention to substitute for a higher and wider thing a shorter and narrower one? The crib was higher and wider, the frame was shorter and less wide. The crib supported the pomace during the whole pressing, the form supported the pomace temporarily until the pomace could be "struck level," and the cloths turned over on the pomace when the form was removed. No new result was accomplished. The same result was not accomplished in a new way. The result was to hold the pomace in position in both cases. The result was

accomplished in both cases by the support which was given it either by the sides of the crib in the one case, or by the sides of the form in the other case. In the case of the crib only such part of the crib was needed to support each layer as immediately surrounded the layer; the part of the crib next above or below the layer effected no part of the supporting; in other words, there was no difference in result whether the crib extended above or below the the layer, any more than in the case of the guide-frame or form in the second patent.

The only *novelty which it seems the complainants agree or admit there was in the invention in the patent in suit, was in the extending the rack underneath the form*, in the use of a guide-frame a few inches smaller instead of a few inches larger than the racks. The result sought and obtained in both cases, one where the form extended beyond the rack and the other where the rack extended beyond the form or guide-frame, was the expression of the juice from the pomace.

It is admitted that the use of the guide-frame is temporary only to hold the cloth while the pomace is being filled therein to form the cheese and to regulate the position of the cheese in the mass, and that after the form has been removed there is nothing there to support the cloth in any way so as to make it strictly conform to the forms which it occupied when the guide-frame was placed upon the rack, excepting the drawing over the ends of the cloth on the cheese and the resistance produced by the cloths lying upon the pomace. (See answers to complainant's expert Low, Q. 55, *et seq.*, p. 129.) Also, that the lower layers would extend more than the upper because of the increased weight above them. (Question 60, p. 130.)

Clark, the patentee, also admits that Boomer, in June, 1874, told him his invention was not good for

anything by reason of want of novelty, and was not patentable. (See x. questions 143 to 152, p. 76.)

Clark also admits that racks, forms and cloths had been in use in making cider about fifty years he should think, as appears by the "Cider Makers' Manual," and that there was a patented rack exhibited in the "Cider Makers' Manual" similar to his rack, which performed the same functions as his rack, was made in the same way as his stiff rack. (See question 103, *et seq.*, p. 74.) Clark also admits that Mathews and Clark, of Pontiac, Michigan, used flexible racks in 1873. (Question 89, p. 74.)

Boomer says also in answer to question 18, *et seq.*, p. 161, "That a guide-frame made of four boards nailed together at the ends was a well-known device among cider makers; that it was an old device; the first device he ever saw or used in a cider mill some thirty-five years ago; that it was used at that time with straw, used to form the cheese and keep the straw in place while the pomace was being put in, and used as a guide in turning the straw so as to envelop the pomace—prevent its spreading out; that this guide-frame was laid on the platform of the press and rye straw spread over the bottom and extended out over the sides of the form. The form was filled nearly full of pomace, and the straw turned over, bringing the ends that extended beyond the form in toward the middle of the cheese, and then a little more straw was spread so as to form channels for the cider to pass out, and a little pomace laid on the top of these ends so as to hold them in place; then the form is raised up and *four sticks put across the corners under the form and over the layer of pomace and straw so that it supported the form in a new position;* then some straw was put on extending out over the pomace, and another layer formed in the same way; in that way they formed four or five or six layers.

Here we have a positive admission as to the use of forms or guide-frames, as called in the patent, made in the same way and used in the same manner as described in the patent, in use for thirty-five years in cider-making. We have an admission also that a substance of a rack, that is four sticks were put across the corners upon the pomace, which sticks extended beyond the form and supported the form. Was it any invention, therefore, to add more sticks to the four sticks and make more sticks extend underneath and support the form or guide-frame? Did it constitute invention to nail together four or more sticks of equal length so that all should extend beyond the form? Does the number of sticks constitute the invention? *It is claimed that the extension of the sticks forming the racks underneath the guide-frame or form constitute the invention.* Have we not here the extension? The witness says the four sticks extended under and supported the form. It surely was no invention to substitute the cloth for the straw, for that is shown and claimed in the patents to Thomas in 1865, and Holbrook in 1871.

Boomer admits also in answer to q. 54, p. 165. About the racks: "It matters not whether two, or three, or four, or five of these cross-sticks practically are used, though the more there is used the stronger the rack is made, and the larger the rack is the more are necessary."

Now if the guide frame, in all essential features, same as Clark's, has been in use for thirty-five years; if racks made of four sticks, extending under and supporting such guide-frame, were practicable and in use for thirty-five years, and if cloths had been in use at least eleven years before the date of the application for the patent in suit; all of which three elements performed the same functions, in the same manner; produced the same result and

in the same business, as described, shown and claimed in the suit, where was the novelty of the invention and how could the combination be a patentable one?

We submit that the complainant and his witnesses have proved, in fact admitted, that there was no novelty in the invention. The theory of the complainant is that the novelty *exists in the extended pomace rack*. Just to see how slim the invention is, if it could be dignified by the term invention, let us add——

If one made and used a guide-frame just like Clark's, and a cloth to enclose the pomace, the same as Clark's, and a rack in all essential features like Clark's, excepting that said rack did not extend underneath the guide-frame, then the maker or user would not infringe the claim of the patent. By cutting the rack an inch or two short he would not infringe.

If this court can declare that other inventions, which have greater importance, lack the important element of novelty, what must it say of an invention whose sole novelty consists in making a few sticks which form a rack one or two inches longer than sticks which had heretofore been used to make the same kind of rack for the same purpose had been made.

I don't know that one can explain this point any better than the learned judge did who delivered the opinion of the court below herein, and the following extract is taken therefrom (see p. 17):

"Assuming for a moment that there is here what the law recognizes as a combination, viz: Such a union of separate and distinct parts that each operates upon and with the others, producing a new and useful result by their united action, the next question to be considered is, has the patentee invented anything worthy of protection?

"Before this patent, cider makers had an undoub-

ted right to use racks and cloths in combination or alone; and they had also a right to use some device by which the pomace could be placed on the racks in layers of uniform thickness. Any man of ordinary mechanical ingenuity who wished to confine a yielding substance within prescribed limits would almost certainly make a frame of the desired size. Clark did this, and only this. He nailed four boards of equal length together at the corners, in the form of a hollow square, and laid it on the rack. Why is there any more of invention in this than the placing of the window in the stove case or the mirror in the car case?

What instrumentality does the patentee here use that was not known and free to every cider maker long before the patent? Take away the guide-frame and nothing remains of his invention. Its use, though in a new position, would seem to be a simple mechanical contrivance, requiring only ordinary skill and judgment and not amounting to invention. Furnish any practical cider maker with cloths and racks, direct him to place the pomace on the racks in a uniform and symmetrical manner, and it would immediately occur to him to do just what the patentee here did.

To adopt the sententious language of the court in Stephenson v. The Railroad Co., 14 Fed. Rep., 457, it may be said, "to authorize a patent the law requires the invention of a new thing. It is not satisfied by inventing a new place for an old thing without change of result."

* * * * * *

As indicative of the patentee's own views of the novelty and patentability of the alleged invention, it appears that he visited Syracuse in the summer of 1874, and explained his system to a member of the Boomer & Boschert Press Company — Mr. Boomer.

In September following, in a periodical issued by that company, and widely circulated, there appeared a full and complete description of the system described in the patent. Under the heading, "The best system yet devised," is the following statement: "It is to last year's experience that we are indebted for the most sensible plans for laying up a cheese—a plan which we predict will be speedily adopted by all wide-awake cider makers, although, perhaps, it has not yet been sufficiently tried to establish its merits, yet, as it has been successfully put into use by several parties, there seems to be no question as to its feasibility." Then follows the description. This, certainly, is a very significant piece of evidence, in view of the fact that Mr. Boomer, who admits that he probably wrote the article, is now vice-president of the Clark Pomace Holder Company, the complainant in this action, his relations with the patentee being of an intimate and confidential character."

To this opinion of the court we will merely add that Boomer admitted upon cross-examination that at the time Clark showed him the alleged improvement, that he did consider his (Clark's) invention worth patenting, *when he saw it patented;* and that he would have considered it worth patenting if *he had known what claim he could make and sustain*, (Q. 113 *et seq.*, p. 45.) and then goes on to show how little, if any novelty there was in the alleged improvement.

Boomer furthermore says *he suggested to Clark to make his racks stiff;* that he found fault with the pliable racks, which was one of Clark's hobbies. (Q. 21 *et seq.*, p. 39.)

Clark admits the fact that Boomer did not favor the pliable racks and said they were not worth anything, and although not admitting in so many words that Boomer did not think the invention worth patenting, yet a fair inference is drawn to

that effect from his testimony. (qs. 59 to 62 and 72 to 76, pp. 72 and 73.)

Now, as to the aggregation.

The several elements of the combination are these: First, the guide-frame; second, an extended pomace rack; third, a cloth to enclose a layer of pomace therein. It must be remembered that the patent describes that two of these three elements, to wit: the extended pomace rack and the cloths which enclose the layer of pomace only co-act, if there can be called co-action, which is doubted, and that the guide-frame is not used in the pressing—but only has a temporary use at best.

It can hardly be said that there is coaction in the two elements above-mentioned. The racks could be dispensed with as is stated in the Thomas patent. The cloths are necessary.

The use of the guide-frames causes no combination between it and the rack and cloths. No new result is produced by its use—the press operates in the same way; the cheese is pressed down and the juice force out as before. As is suggested in the opinion of the court below: "To what that is new and useful does the guide-frame contribute in connection with the other devices?" In other words, suppose this patentee to be the first inventor of racks and cloths, could he be deprived of the benefits of his discovery in its simplest and most practical form by another person who should obtain a patent for such a combination as is described in the specification?

Would it not be immediately insisted that the latter was simply using the old invention with the addition of a very simple and well-known mechanical contrivance which added to the old combination no new co-operative element?

It would seem at least doubtful whether the guide-frame, to any greater extent than the shovel with

which the pomace is placed upon the racks, or the instrument with which it is "struck level with the girts of the frame," acts in combination with the racks and cloths. The guide frame has been removed and has ceased to perform any function before the racks and cloths begin to act reciprocally; it does not act on them, or they on it. If straw or a solid platform was under the guide-frame instead of the racks it would perform the same office.

To constitute a valid combination there must be a new result produced by the combined action of all the component parts. What is the result in this case? It may perhaps be admitted that the guide-frame operates more conveniently than the old devices; but something more than this is necessary to sustain a patent for a combination."

Hailes v. Van Wormer, 20 Wall., 353.
Pickering v. McCullough, 104 U. S., 310.
Rechendorfer v. Faber, 92 U S., 347.
Packing Co. cases, 105 U. S., 566.

III.

Clark, the alleged patentee, abandoned his invention to the public.

Clark admits that he publicly exhibited his alleged invention at fairs and sold the same in 1874, and since that time up to the time he obtained the patent (question 81, *et seq.*, p. 73), and that he received royalties from the Boomer & Boschert Press Co., for the use of said invention before he made his application for said patent. (Question 98, *et seq.*, p. 74.)

He tried to keep within the two years allowed by law to make his application and says that he publicly exhibited his invention at the fairs in September, 1874. He admits, however, that he showed the invention to Mr. Boomer in June, 1874. (Question 144, p. 71.)

Boomer says that Clark sold the alleged invention in 1874 and exhibited it at the fairs in that year; that he met Clark at the fairs and the invention was exhibited on the machines made by his firm, the Boomer & Boschert Press Co. (questions 106 to 113, p. 45), and adds that he printed a statement in his paper, "that the Boomer & Boschert Press Company was *one of the first to recognize the merits of the invention; in fact they had used or introduced it for two seasons before Clark obtained his patent, presenting it in connection with their press as an unpatented device.* This publication was called the "National Press," and the issue in which this article appeared was dated July, 1880, "Defendant's Exhibit, No. 27." (Question 140, p. 46.)

Here Clark admits, and Boomer, the vice-president of the complainant admits, that he made and sold the invention for two years before his application and allowed others to do it. It was publicly exhibited at the Centennial Exhibition in 1876, commencing in May, 1876, in Philadelphia, without Clark's permission. (Question 77, p. 73.)

What inference are we to draw from these statements? Must it not be that Clark thought so little of his invention that he never intended to make an application for a patent therefor. He admitted that he waited within four days of the expiration of two years after he commenced to exhibit it before he made his application, but he says he exhibited it to Boomer in June, 1874, thus being more than two years before making an application. What did Clark do about the invention between June, 1874, and September 11, 1874, a period of nearly three months? Did he wait these three months before he commenced to make and sell? By what or upon what data does he fix September 11, 1874, as the first he made and sold. It must be remembered

that Boomer says an account of the invention was published in his paper *and distributed at the fair at Columbus, Ohio, which commenced September* 7 *or* 8, 1874 (Question 21, p. 51), at which fair his firm was exhibiting cider presses. *He further says Clark came to his establishment in August*, 1874 (*Clark says June*, 1874), *and wanted us to introduce it. That he saw the advantage of it and took right hold of it at once. He made the racks and forms and laid up a cheese and tested it, and tried it there in Syracuse in their shop.* (Question 99, p. 44.) *Now, if as Clark says, he went to Boomer & Boschert Press Co., in June*, 1874, *and as Clark and Boschert admit Clark went there to get them to introduce the invention, and as Boomer says they took right hold of it and wrote articles about it, and that it was publicly exhibited at fairs in September*, 1874, *how are we to construe these acts, except upon the principle of dedication to the public? At any rate we must infer that Clark sold or caused to be sold, the invention, and used or caused the same to be used, between June*, 1874, *and September* 11, 1874. If either of these things were done before September 11, 1874, then the patent is void because the invention was in public use or on sale for more than two years prior to the application, which was made September 11, 1876.

There is one fact, although a slight one, which confirms one in the belief that the invention was publicly used and sold more than two years before the application, and that Clark knew it, and did not make oath to the contrary, and that is, the oath filed with the application omits entirely any statement in regard to the matter. (See the oath on page 294).

Admitting for the sake of the argument that Clark did not publicly exhibit, or sell, the invention prior to September 11, 1874, being just two years before

his application, *yet he stood by and so freely allowed others to use and sell the invention that it must be held he abandoned the invention to the public.*

In the case of the American Hide and Leather Splitting and Dressing Machine Co. v. American Tool and Machine Co. (4 Fisher's Patent Cases, p. 284), 1870, it was held that an inventor might so freely allow the use of his invention within two years immediately preceding his application, as to have his acts amount to an abandonment of the invention.

Where an inventor allows his invention to be used in public by an individual or individuals, or he allows the whole public to use it, he abandons his invention and dedicates it to the public.

Curtis on Patents, § 102.

IV.

Clark, the patentee, obtained the patent by fraud and misrepresentations, and upon a failure to comply with the statute.

It has been proved, as before set forth, that *Boomer suggested a part*, that is, the *rigid* rack, to Clark in June, 1874, at their first interview.

At the time of his application Clark knew of the use of his pretended invention by others; he knew of the publication of the invention in the "Cider Makers' Manual," published in 1869; he knew of the publication of the invention in the "Boomer & Boschert Press of September, 1874; he knew he had publicly used and sold the invention, and offered to sell and wanted others to introduce the invention more than two years prior to his application, and *he fails to make the proper statement under oath required by the statute. and by the rules of the Patent Office.* If he could not *truthfully* swear to the statement *then his patent is void. If he swore*

to the truth he could not obtain a patent. Knowing his dilemma he fails to make any statement under oath, as required.

Section 4292 of the United States Revised Statutes reads in part as follows:

"The applicant shall make oath that he does verily believe himself to be the original and first inventor or discoverer of the art, machine, manufacture, composition or improvement for which he solicits a patent; *that he does not know and does not believe that the same was ever before known or used*, and shall state of what country he is a citizen," etc.

In this case Clark *knew that the invention had been known before he discovered it.*

In this case Clark *did not sign* the affidavit required, and in the pretended affidavit there is no statement "*that he did not know*," etc.

The authority to issue patents is a limited one, and the party must bring himself within the terms of the statute before he can derive any title to demand a patent.

Pennock v. Dialogue, 1 Whitman's Patent Cases, p. 127.

The failure on the part of a patentee in the prerequisites of the act authorizing a patent, is a bar to a recovery, and this defense does not depend on the intention of the inventor, but is a legal inference upon his conduct.

Grant v. Raymond, 1 Whitman's Patent Cases, p. 146.

V.

The patent is void because the description of the invention contained therein is not in such full, clear and exact terms as to enable one skilled in the art to which it appertains to make and use the same.

It is impractical to construct the device and lay

up cheeses in the *form* as laid down in the specifications and drawings. (See defendant's exhibits, "Perspective views of Clark's guide-frame;" see testimony of Alexander Selkirk, that specifications are faulty, and the admission of complainant's expert, Low, that the drawings annexed to the patent are vague and indefinite).

VI.

The defendant does not infringe the claim of the patent.

It is admitted that the defendant used a rack, a form and a cloth in his business of making cider, but his rack does not *extend* beneath the form, nor is the form of the construction of the complainant. *The rack and form are one piece, and are used in both capacities at times, or only as a rack, as may be desired.* (See exhibit.)

The witnesses to prove the infringement are two in number, one a boy, John Pemberton, aged seventeen years, who displays very great ignorance, who says he worked for the defendant in 1876 and in the fall of 1877 (being both before and after the date of the patent), and that in 1877 Ferguson, the defendant, had a press upon the bottom of which *cleats were nailed*, and that in laying up a cheese the defendant *put a box on the cleats*, and put cloths in the box and filled it with pomace and turned the cloths over, etc. The other witness, Goodfellow, says that he worked for the defendant in the fall of 1880, and that the defendant in laying up cheeses, that there was a rack laying in the platform, and a form placed in that, and cloths on that, and that pomace was filled in, the cloths turned over and the forms taken off. That defendant afterwards used a rack which turned up on the four sides, made under the defendant's own patent, which did away with the necessity of a form.

The sides of this rack were turned down when the cloth had been turned over. That no form was used excepting such as was made by the turning up of the sides of the rack, the sides being held in position when turned up by sticks with notches in them, and upon the removal of the sticks the four sides of the rack dropped down. (See page 27, *et seq.*)

The defendant says (pages 174, Q. 7, *et seq.*) that November 23, 1874, he bought a press off N. Griffes of Schenectady, a bill of which he produced. (Question 31, p. 176). That in the season of 1874 he used the press he bought of Griffes which had notcheted screws, the cheese being laid up in alternate sections, a rack placed between each section or layer, and the pomace enveloped or filled a cloth between; that he could not succeed with that plan; it was not large enough; he finally adopted a plan which made the cheese twice as large, using *two racks at the side of each other*, the pomace being filled in a cloth as before, a form made of four strips of inch boards one inch thick, six inches wide, *the form being less in area than the combined size of the racks*, the pressure was applied and the cheese squeezed out. This he used in 1874, and 1875, and 1876, being three seasons before the patent was granted, which was February 6, 1877, and almost two whole years before the date of the application therefor, to wit, September 11, 1876. That he had adopted this plan without seeing or hearing anything about Clark or his invention, and that he continued to use it until he obtained a patent for a combined rack and form, the same being a rack with its four sides hinged to turn up or let down at pleasure.

We claim:

First. That the infringement has not been shown, because while *nominally two witnesses* have been sworn, yet *only one* gives any evidence which might be construed into any statement of the infringe-

ment. The answer was under oath, and two witnesses who had knowledge of the infringement should have been examined and positively proved such infringement.

Second. The witness who was sworn is fully met by the evidence of the defendant.

Third. The evidence shows that the defendant used the alleged infringing process nearly two years before the application for the patent in suit.

Fourth. The process of the defendant was not the process claimed in the patent.

Let us see if this is not so. The claim of the patent is:

"The guide-frame D, in combination with an *extended pomace rack*, and a cloth to inclose a layer of pomace therein, substantially as described."

It will be borne in mind that the complainant claims that the novelty of the invention consists in making the *rack larger than the form, so that the rack will extend underneath and support the form.*

The defendant proves that his *form was larger than the rack*, and he says the first rack was nailed permanently to the floor of the press; that in making his layers *he put two racks side by side and then the form on the two racks, and that when the two racks were laid down side by side* THEN *the form rested upon the joined or adjacent racks, and* NOT UNTIL THEN. The first rack which was permanently fastened to the bottom of the press was merely parallel cleats nailed to the bottom of the press. The complainant's witnesses admit that fact.

The rack used by the defendant not extending beneath the form, the process claimed by the complainant in the patent, could not be infringed, especially so as one of the essential elements of the

claim, to wit, *an extended rack* is not found in the defendant's process.

Boomer, complainant's witness, and the vice-president of complainant, says, *there would be no infringement if racks, forms and clothes are used, if the rack does not extend beyond the form; that the extended rack is a vital element in the patent.* (Question 218, p. 66, to question 223).

The defendant has not used the whole combination; he has used the same elements that have been used for many years (as has been admitted) prior to the date of the application. It cannot be said that he has used an equivalent, because in the first place he used in place of the *movable bottom rack of the patent cleats permanently* fastened to the press; *secondly*, in place of one small rack, *which did not extend underneath the form he uses two side by side*, and made a form large enough for the two combined racks. The patentee, Clark, had a patent in March, 1874, and by reason of such patent has limited his claim to the specific construction shown and claimed in the patent. He, Clark, is not the original inventor of a new improvement; in other words he is not the first in the field; his own patent and the patents of others limit him to his specific construction and claim, and in as much as the defendant does not use the precise combination claimed in the patent the defendant does not infringe.

Where three elements are claimed in a patent, in combination, the use of *two of the elements only* does not infringe the patent.

Gould v. Rees, 2 Whitman's Pat. Cases, p. 437, S. C.; 15 Wallace, 187.

If an invention is an improvement on a known machine by a mere change of form, the patentee cannot treat another, who has improved the original

machine by the use of a different form or combination performing the same functions, as an infringer.

McCormick v. Talcott, 1 Whitman's Pat. Cases, 1085.
See, also, Carne v. Hyde, 16 Peters, 514.
Vance v. Campbell, 1 Blach., 424.
Roberts v. Hamken, 2 Clifford, 504.
Mabie v. Haskell, id., 511.
Brooks v. Fisher, 15 Howard, 219.
Stimpson v. Railroad, 1(id., 329.
Prouty v. Ruggles, 16 Peters, 341.
Howe v. Abbott, 2 Story, 194.

VII.

Complainants are not the *bona fide* holders and owners of the letters patent in suit.

The complainant, it is pretended, is an incorporated company.

Boomer, complainant's vice-president, testified that the company had not been incorporated at the time it took the assignment. (Question 168, etc., p. 48.)

The company (complainant) has never made any profits from the manufacture of the invention, in fact the company has never made the invention. (Question 69, *et seq.*, p. 41, to question 77, p. 42.)

The complainant bought the patent and issued stock of the company to the owners of the patent *pro rata*, according to the amount each one owned in the patent, the owners of the patent forming the company. (See Boomer's testimony, question 147 to 149, p. 47.)

Here is a complainant which took an assignment before its incorporation, and which has never made the invention, *but merely licenses others to make and use it*, coming into court and asking that a patent may be sustained, and persons held to be infringers who use the invention or something similar to, but not just the invention.

Will the court uphold such a proceeding?

If the company was not incorporated there was no person or corporation in being at the time it took the assignment, who could take and hold such assignment, and the assignment is therefore void.

If properly incorporated at the time the assignment was made, and it obtained a good title to the patent then, under the decision of
the company never having existed for any other purpose than to license others to make and use the patent, and to receive royalties and to bring suits for infringement, the bill was properly dismissed for this reason if no other.

VIII.

The judgment of the Circuit court dismissing the bill, and for costs should be affirmed with costs.

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